S. Hrg. 100-931

NATIVE AMERICAN MUSEUM CLAIMS COMMISSION ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 187

TO PROVIDE FOR THE PROTECTION OF NATIVE AMERICAN RIGHTS FOR THE REMAINS OF THEIR DEAD AND SACRED ARTIFACTS, AND FOR THE CREATION OF NATIVE AMERICAN CULTURAL MUSEUMS

JULY 29, 1988
WASHINGTON, DC

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NATIVE AMERICAN CULTURAL MUSEUM CLAIMS COMMISSION ACT

FRIDAY, JULY 29, 1988

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:46 a.m., Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Murkowski, Daschle, Melcher, and Evans.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. We are here this morning to receive testimony on an amendment in the nature of a substitute to S. 187, a bill to provide a mechanism for the resolution of disputes and the reparation of Native American skeletal remains, cultural artifacts, and other items of religious or cultural significance.

S. 187 was introduced on January 6, 1987 by Senator Melcher and was referred to this committee. The committee held a hearing on S. 187 on February 20, 1987. Because of the concerns expressed at that hearing, Senator Melcher has undertaken a substantial revision of the measure.

[Text of S. 187 follows:]

II

Calendar No. 1147

100TH CONGRESS
2D SESSION

S. 187

[Report No. 100–601]

To provide for the protection of Native American rights for the remains of their dead and sacred artifacts, and for the creation of Native American cultural museums.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 1987

Mr. MELCHER (for himself, Mr. BURDICK, Mr. BRADLEY, Mr. MCCAIN, Mr. INOUYE, Mr. BAUCUS, and Mr. MITCHELL) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

OCTOBER 21 (legislative day, OCTOBER 18), 1988

Reported by Mr. INOUYE, with amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide for the protection of Native American rights for the remains of their dead and sacred artifacts, and for the creation of Native American cultural museums.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Native American Cultural Preservation Act".~~

~~FINDINGS~~

~~SEC. 2. The Congress finds that—~~

~~(1) numerous museums, universities, and government agencies have considerable Native American collections that include artifacts of a sacred nature and human skeletal remains that morally should be returned to the families, bands, and tribes;~~

~~(2) these artifacts and remains are extremely important to Native Americans;~~

~~(3) controversy exists between museums, universities, government agencies, and Indian tribes or Native Hawaiian organizations regarding the title to, preservation of, and contemporary disposition of, human skeletal remains and sacred artifacts; and~~

~~(4) there is a need to promote the development of museums archives, and historical preservation efforts within the Native American community through the provision of appropriate technical assistance.~~

~~DEFINITIONS~~

~~SEC. 3. For purposes of this Act—~~

~~(1) The term "deaccession" means the formal and official process of removal of a human skeletal specimen or sacred artifact from the collection of a museum.~~

~~(2) The term "repatriation" means the formal and official process of returning a sacred artifact or human~~

~~skeletal specimen to the people from whom it originated.~~

~~(3) The term "Native American" means any individual who is—~~

~~(A) an Indian, or~~

~~(B) a Native Hawaiian.~~

~~(4) The term "Indian" means any individual who is an enrolled member of an Indian tribe.~~

~~(5) The term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which—~~

~~(A) is recognized by the Federal Government or a State as eligible for special programs and services provided to Indians because of their status as Indians, or~~

~~(B) was terminated by Federal law after 1940.~~

~~(6) The term "Native Hawaiian" means any descendent of a person who, prior to 1778, was a native of the islands that constitute the State of Hawaii.~~

~~(7) The term "Native Hawaiian organization" means any organization which is recognized by the Governor of the State of Hawaii as an organization~~

~~that primarily serves, and represents the interests of, Native Hawaiians.~~

~~(8) The term "traditional cultural authority" means any individual who is recognized by the members of an Indian tribe, in accordance with traditional religious and cultural practices, to be an authority in the traditional cultural affairs of the Indian.~~

~~(9) The term "museum" means any museum, university, government agency, or other institution which possesses, or has any control over, any—~~

~~(A) skeletal remains of any Native American, or~~

~~(B) sacred artifacts.~~

~~(10) The term "sacred artifact" means any material which is devoted to, or dedicated to, a deity or some Native American religious purpose and utilized for the conduct and observance of Native American religion by an Indian tribe or by any individual who is a Native American.~~

~~NATIVE AMERICAN MUSEUM ADVISORY BOARD~~

~~SEC. 4. (a) There is hereby established the Native American Museum Advisory Board (hereafter in this section referred to as the "Board").~~

~~(b)(1) The Board shall consist of the following 17 members:~~

~~(A) 6 Indians providing appropriate regional and cultural representation who are appointed by the President from among a list of names of elders, spiritual leaders, and traditional cultural authorities submitted by the governing bodies of Indian tribes, 1 Native Hawaiian appointed by the President from among a list of elders and spiritual leaders submitted by the Governor of Hawaii,~~

~~(B) 2 members of the House of Representatives and 2 members of the Senate,~~

~~(C) 2 individuals appointed by the President who represent the sciences of archeology and anthropology,~~

~~(D) 2 individuals appointed by the President who are significantly interested and experienced in the matters which the Board is likely to consider and who provide representation for museums and universities,~~

~~(E) an individual appointed by the President who represents the Institute for American Indian Arts,~~

~~(F) the Secretary of the Smithsonian Institution or a designated representative of such Secretary,~~

~~(G) the Secretary of the Interior or a designated representative of such Secretary,~~

~~(H) the Secretary of Agriculture or a designated representative of such Secretary, and~~

~~(I) the Executive Director of the Advisory Council on Historic Preservation or a designated representative of such Executive Director.~~

~~(2)(A) Except as otherwise provided in subparagraph (B), the term of office for each member of the Board appointed under subparagraph (A), (B), (C), or (D) of paragraph (1) shall be 3 years.~~

~~(B) The terms of appointment shall be for four years with the initial term of one-half of the initial appointments being for two years. The President shall designate the term of office of such initial members of the Board at the time of their appointment.~~

~~(3) Each individual appointed by the President under paragraph (1) shall be significantly interested and experienced in the matters that the Board is likely to consider. Such appointments shall be made without regard to the political affiliations of such individual.~~

~~(4) The members of the Board described in subparagraphs (E), (F), (G), (H), and (I) of paragraph (1) shall not be eligible to vote on any matter considered by the Board; but such members shall be entitled to attend any meetings of the Board and to provide advice to the Board on any matter.~~

~~(5) The Board shall elect a chairman and vice chairman from among the members of the Board appointed under subparagraph (A), (B), (C), or (D) of paragraph (1). Such officers~~

~~shall serve as chairman and vice chairman for a term of 1 year.~~

~~(6) Any individual appointed to fill a vacancy on the Board shall serve for the remainder of the unexpired term of the member who caused such vacancy. A vacancy on the Board shall not affect the powers of the Board.~~

~~(7) The presence of a majority of the members of the Board who are eligible to vote shall constitute a quorum for the purpose of conducting the business of the Board.~~

~~(8) The Board shall meet at least once during each quarter of each calendar year.~~

~~(c) The functions of the Board shall be—~~

~~(1) the resolution of disputes under the provisions of section 5,~~

~~(2) the provision of advice to the Native American Center of the Library of Congress, and~~

~~(3) the provision of advice to the Advisory Council on Historic Preservation on matters relating to Native American cultural and historical preservation.~~

~~(d) Each member of the Board who is not otherwise employed by the Federal Government shall receive compensation at a rate equal to the daily rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day, including traveltime, such member is engaged in the actual performance of duties as a member~~

~~of the Board. A member of the Board who is otherwise an officer or employee of the Federal Government shall serve without additional compensation; but all members of the Board shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Board.~~

~~(c)(1) The Board is authorized to appoint and fix the compensation, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, of an Executive Director and a General Counsel. The annual rate of compensation of the Executive Director and the General Counsel shall not exceed an annual rate equal to the annual rate provided for level V of the Executive Schedule under section 5316 of such title.~~

~~(2) The Executive Director appointed under paragraph (1) is authorized to appoint such employees as are necessary to enable the Board to carry out the functions of the Board.~~

~~(3) Notwithstanding any other provision of Federal or State law, the Board, and the Executive Director appointed under paragraph (1), shall extend a preference to Native Americans in employment by the Board.~~

~~(4) The General Counsel appointed under paragraph (1) is authorized to—~~

~~(A) appoint such other attorneys as may be necessary to assist the General Counsel,~~

~~(B) represent the Board in courts of law whenever appropriate, and~~

~~(C) perform such other legal duties and functions as the Board may direct.~~

~~(f) The Board is authorized to enter into agreements with the General Services Administration and any other agency of the Federal Government for the procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds appropriated for the Board.~~

~~(g) The provisions of section 14 and subsections (e) and (f) of section 10 of the Federal Advisory Committee Act (5 U.S.C. Appendix 2) shall not apply with respect to the Board.~~

~~(h) There are authorized to be appropriated for each fiscal year such sums as may be necessary to enable the Native American Museum Advisory Board to carry out its functions for such fiscal year.~~

~~RESOLUTION OF DISPUTES~~

~~SEC. 5. (a)(1) The governing body of any Indian tribe or Native Hawaiian organization or the administrator of any museum may file with the Native American Museum Advisory Board a petition requesting the mediation of any dispute~~

~~between a museum and an Indian tribe or Native Hawaiian organization relating to—~~

~~(A) the skeletal remains of any Native American who was—~~

~~(i) a member, or ancestor of a member, of such Indian tribe, or~~

~~(ii) a Native Hawaiian, or~~

~~(B) any sacred artifacts of such Indian tribe, of any member of such Indian tribe, or of any Native Hawaiian.~~

~~(2) A petition may be filed under paragraph (1) with respect to a dispute between a museum and an Indian tribe or Native Hawaiian organization only after the earlier of—~~

~~(A) the date that is 1 year after the date on which the petitioner submitted written notice to the other party to the dispute of the objections or demands of the petitioner,~~

~~(B) the date on which the other party to the dispute submitted written notice to the petitioner expressing a refusal to negotiate with the petitioner on the matter in dispute, or~~

~~(C) if the other party to the dispute does not acknowledge the written notice of the petitioner described in subparagraph (A), the date that is 90 days~~

~~after the date on which the petitioner submitted such notice to such other party.~~

~~(b)(1) Upon receipt of a petition under subsection (a), the Native American Museum Advisory Board shall initiate an investigation to determine whether—~~

~~(A) any skeletal remains involved in the dispute identified in the petition—~~

~~(i) are of a Native American who was—~~

~~(I) a member, or ancestor of a member, of the Indian tribe that is a party to the dispute, or~~

~~(II) a Native Hawaiian, or~~

~~(ii) were found on lands historically occupied by such Indian tribe or by Native Hawaiians, and~~

~~(B) any artifacts involved in the dispute are sacred artifacts of such Indian tribe, of any member of such tribe, or of Native Hawaiians.~~

~~(2) If any of the determinations made under paragraph (1) with respect to a petition are affirmative, the Native American Museum Advisory Board shall mediate negotiations between the parties to the dispute identified in the petition for the purpose of obtaining an agreement between the parties that resolves those matters involved in such dispute.~~

~~(3) If all determinations made under paragraph (1) with respect to a petition are negative, the Native American Museum Advisory Board shall dismiss the petition.~~

~~(c)(1) If the Native American Museum Advisory Board determines that efforts to mediate a dispute under subsection (b)(2) have not been successful in resolving the dispute, the Native American Museum Advisory Board shall formulate a compromise settlement of that portion of the dispute that involves any matter which was the subject of an affirmative determination made under subparagraph (A) or (B) of subsection (b)(1).~~

~~(2) Any compromise settlement formulated by the Native American Museum Advisory Board under paragraph (1) shall—~~

~~(A) seek to accommodate—~~

~~(i) the interests of the Indian tribe or Native Hawaiian organization in—~~

~~(I) repatriation and reburial of any skeletal remains of any member, or ancestor of a member, of the Indian tribe or of any Native Hawaiian,~~

~~(II) repatriation and preservation of sacred artifacts of the Indian tribe, of a member of the Indian tribe, or of a Native Hawaiian, and~~

~~(ii) the interests of the museum in—~~

~~(I) access to such remains and artifacts for purposes of further study and research, and~~

~~(II) preservation of such remains and artifacts.~~

~~(B) In the event such compromise settlement provides for repatriation to the Indian Tribe or Native Hawaiian group, the settlement shall provide to the maximum extent possible for museum access to such remains or artifacts for research, study or exhibition provided that—~~

~~(i) the Indian tribe or Native Hawaiian organization approves of such research or study, and~~

~~(ii) the museum agrees to share with the Indian tribe or Native Hawaiian organization any information obtained from such research or study before such information is published.~~

~~(3) Upon completing the formulation of a compromise settlement of a dispute under paragraph (1), the Native American Museum Advisory Board shall—~~

~~(A) submit a copy of such settlement to each party to the dispute,~~

~~(B) publish a summary of such settlement in the Federal Register, and~~

~~(C) monitor the actions of each party to the dispute to determine whether such settlement is being fully carried out within a reasonable period of time.~~

~~(d)(1) Notwithstanding any other provision of law, if, as a result of the monitoring conducted under subsection (c)(3)(C), the Native American Museum Advisory Board determines that—~~

~~(A) the compromise settlement formulated under subsection (c)(1) is not being carried out, and~~

~~(B) the museum which is a party to the dispute is primarily responsible for the failure of such settlement to be carried out,~~

~~such museum shall, during the 2-year period beginning on the date on which notice of such determination is published in the Federal Register, cease to be eligible to receive any Federal funds and to receive benefits under any Federal program or any program funded (in whole or in part) with Federal funds.~~

~~(2) Notwithstanding any other provision of law, if, as a result of the monitoring conducted under subsection (c)(3)(C), the Native American Museum Advisory Board determines that—~~

~~(A) the compromise settlement formulated under subsection (c)(1) is not being carried out, and~~

~~(B) the Indian tribe or Native Hawaiian organization which is a party to the dispute is primarily responsible for the failure of such agreement to be carried out,~~

~~the Indian tribe or Native Hawaiian organization shall, during the 2-year period beginning on the date on which notice of such determination is published in the Federal Register, cease to be eligible for any Federal funds or benefits provided for historic preservation.~~

~~(3) The Native American Museum Advisory Board shall publish in the Federal Register notice of any determination made under paragraph (1) or (2) and shall provide direct written notice of such determination to the head of each Federal agency or department which such Board has reason to believe may be providing Federal funds to—~~

~~(A) the museum, Indian tribe, or Native Hawaiian organization that is the subject of such determination, or~~

~~(B) any program which provides benefits to such museum, Indian tribe, or Native Hawaiian organization.~~

~~(c) Any determination made by the Native American Museum Advisory Board under this section shall be final and shall not be reviewable in any court.~~

~~NATIVE AMERICAN CENTER~~

~~SEC. 6. (a) There is hereby established within the Library of Congress a bureau which shall be known as the "Native American Center".~~

~~(b) The functions of the Native American Center shall be—~~

~~(1) the preparation, and coordination with museums, of a provenance (to the fullest extent possible) of all—~~

~~(A) skeletal remains of Native Americans,~~

~~(B) sacred artifacts, and~~

~~(C) other artifacts and collections relating to Native American history or culture,~~

~~that have been acquired or collected with the assistance of the Federal Government or by use of Federal funds,~~

~~(2) the preparation, for distribution or sale to Indian tribes, Indian tribal organizations, Native American educational institutions, and other educational institutions, of educational materials on collections that relate to Native American history or culture,~~

~~(3) the continual provision of advice, support, and technical assistance to Indian tribes and Native Hawaiian organizations in—~~

~~(A) the establishment of model museums and archives, and~~

~~(B) historical preservation, including preservation through cultural photography, and archeological and anthropological activities,~~

~~(4) the promotion of cooperation and coordination of activities between Indian tribes, and museums located in the United States,~~

~~(5) the promotion of cooperation, dialogue, and sharing of artifacts, materials, and information between Indian tribes, Native Hawaiian organizations, and museums located in foreign countries which have collections that contain—~~

~~(A) skeletal remains of Native Americans,~~

~~(B) sacred artifacts, or~~

~~(C) other artifacts relating to Native American history or culture,~~

~~(6) the provision of seminars on Native American history and culture,~~

~~(7) the publishing of academic papers and articles on Native American history and culture, but only after consulting with—~~

~~(A) the Indian tribes that are the subject of such papers or articles, or~~

~~(B) Native Hawaiian organizations if Native Hawaiians are the subject of such papers or articles,~~

~~(8) the provision of advice and assistance to museums on the proper care and preservation of—~~

~~(A) skeletal remains of Native Americans,~~

~~(B) sacred artifacts, and~~

~~(C) other artifacts relating to Native American history or culture,~~

~~in a manner that is consistent with, and sensitive to, the culture of Native Americans, and~~

~~(9) the provision of advice, financial assistance, and technical assistance for—~~

~~(A) the identification, deaccession, and disposition of any skeletal remains of Native Americans, and~~

~~(B) the repatriation of sacred artifacts and any other artifacts relating to Native American history or culture.~~

~~(c)(1) The Native American Center shall be administered by the Director of the Native American Center, in consultation with the Native American Museum Advisory Board. The Director of the Native American Center shall be appointed by the Native American Museum Advisory Board, without regard to the provisions of title 5, United States~~

~~Code, governing appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code. The annual rate of compensation for the Director of the Native American Center shall not exceed an annual rate equal to the annual rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.~~

~~(2) The Director of the Native American Center, in consultation with the Native American Museum Advisory Board, shall appoint and determine the compensation of—~~

~~(A) an individual who has at least a master's degree in archeology,~~

~~(B) an individual who has at least a master's degree in cultural anthropology,~~

~~(C) an individual who has at least a master's degree in history, and~~

~~(D) other support staff,~~

~~without regard to the provisions of title 5, United States Code, regarding appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, but the annual rate of compensation for such employees shall not exceed an annual rate equal to the annual rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.~~

~~(3) Notwithstanding any other provision of Federal or State law, the Director of the Native American Center shall extend a preference to Native Americans in—~~

~~(A) admissions to, and enrollment in, programs conducted by the Native American Center,~~

~~(B) employment by the Native American Center, and~~

~~(C) assistance provided by the Native American Center.~~

~~(d) In order to assist the Native American Center in carrying out the requirements of subsection (b)(1), each museum that has received Federal funds, or has participated in any programs funded (in whole or in part) with Federal funds shall prepare a provenance of all—~~

~~(1) skeletal remains of Native Americans,~~

~~(2) sacred artifacts, and~~

~~(3) other artifacts and collections relating to Native American history or culture,~~

~~that are under the control of such museum.~~

~~(e)(1) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each fiscal year beginning after the date of enactment of this Act, a separate statement which specifies the amount of funds requested by the President for the Native American Center for such fiscal year.~~

~~(2) There are authorized to be appropriated for each fiscal year such sums as are necessary to enable the Native American Center to carry out its functions.~~

~~CONFORMING AMENDMENTS TO THE ARCHEOLOGICAL RESOURCES PROTECTION ACT OF 1979~~

~~SEC. 7. (a) Section 3 of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb) is amended—~~

~~(1) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "or Native Hawaiian community or organization", and~~

~~(2) by adding at the end thereof the following new paragraphs:~~

~~"(8) The term 'Native Hawaiian' means any descendant of a person who, prior to 1778, was a native of the islands that constitute the State of Hawaii.~~

~~"(9) the term 'Native Hawaiian community or organization' means any community of Native Hawaiians or any organization which primarily serves and represents Native Hawaiians.~~

~~"(10) The term 'religious or cultural site' means any location or land area deemed by an Indian tribe to have value in the traditional culture or religion of such tribe, including, but not limited to, areas where religious practices are or were in the past carried out, areas where visions are or were sought, areas figuring~~

~~in tradition, and areas known or thought to contain graves or human skeletal material.~~

~~"(11) The term 'sacred artifact' means any material which is dedicated to a deity or some religious purpose of an Indian tribe or of any member of an Indian tribe and utilized for the conduct and observance of the religion of an Indian tribe or of any member of an Indian tribe.~~

~~"(12) The term 'traditional cultural authority' means any individual recognized by the members of an Indian tribe, in accordance with their traditional religious and cultural practices, to be an authority in the traditional cultural affairs of the Indian tribe.".~~

~~(b) Subsection (b) of section 4 of such Act (16 U.S.C. 470ee(b)) is amended—~~

~~(1) by inserting "except as provided in subsection (k)," before "the archaeological resources" in paragraph (3),~~

~~(2) by striking out "and" at the end of paragraph (3),~~

~~(3) by striking out the period at the end of paragraph (4) and inserting in lieu thereof ", and", and~~

~~(4) by adding at the end thereof the following new paragraph:~~

~~"(5) the applicant will comply with the provisions of subsection (k).".~~

~~(c) Subsection (c) of section 4 of such Act (16 U.S.C. 470cc(c)) is amended by inserting "and shall consult with such Indian tribe as to whether, and under what terms and conditions, the permit should be issued" after "cultural importance".~~

~~(d) Section 4 of such Act (16 U.S.C. 470cc) is amended by adding at the end thereof the following new subsection:~~

~~"(k) If graves, human skeletal materials, or sacred artifacts are excavated, or may be excavated under permits issued under this section, or otherwise exhumed on public lands or Indian lands, the Federal land manager shall consult with appropriate archeological and physical anthropological authorities and—~~

~~"(1) with the Indian tribe having cultural affiliations with the deceased individuals represented by such graves or skeletal material, or with the users of such sacred artifacts, or~~

~~"(2) if the deceased individuals or users were not members, or ancestors of members, of an Indian tribe, with representatives of any other community or group having such affiliations,~~

~~to determine the disposition of such graves, skeletal material, or sacred artifacts. In the event agreement cannot be reached~~

~~with such authorities, the Federal land manager shall seek mediation by the Native American Museum Advisory Board if an Indian tribe is involved. Until an agreement is reached or mediation had been completed, the graves, human skeletal material, or sacred objects in question shall be maintained either in place or in storage (for no longer than 18 months) in a secure and respectful manner and shall be subjected to only such study as the Indian tribal government or other representatives consulted under this subsection may permit.”.~~

~~(c) Section 11 of such Act (16 U.S.C. 470jj) is amended—~~

~~(1) by inserting “, Indian tribes,” after “Indian lands” in paragraph (2), and~~

~~(2) by inserting “, Indian tribes,” after “referred to in paragraph (1)”.~~

SECTION 1. This Act may be cited as the “Native American Museum Claims Commission Act”.

SEC. 2. FINDINGS. Congress finds that—

(1) numerous museums, universities, and government agencies have acquired collections of Native American items including human skeletal remains, ceremonial artifacts and grave goods;

(2) Native American collections have been acquired through archaeological excavation, contributions from the United States military which had collected

human remains and the spoils of war, and through donations or purchase of items from private individuals;

(3) Public Law 95–341 (42 U.S.C. 1996), popularly known as the "American Indian Religious Freedom Act", established that it is the policy of the United States to protect Native American religious practices and beliefs;

(4) American public law has historically respected the sanctity of burial grounds and protected such grounds from desecration and depredation;

(5) the ability to practice Native American religious ceremonies and activities is often linked to certain ceremonial objects which are necessary for the proper observance of Native American religion;

(6) the freedom to practice religion is a right constitutionally guaranteed to all Americans; and

(7) there is no Federal law to facilitate the resolution of disputes which arise when Native Americans claim skeletal remains, ceremonial artifacts or grave goods held by a museum or other institution.

SEC. 3. DEFINITIONS.—For purposes of this Act—

(1) The term "repatriation" means the formal and official process of returning ceremonial artifacts, human skeletal remains, or grave goods to the Indian

tribe(s) or Native Hawaiian group from which it originated.

(2) The term "Native American" means any individual who is—

(A) an Indian, or

(B) a Native Hawaiian, or

(C) an Alaskan Native, including Aleuts and Inuits.

(3) The term "Native Hawaiian" means any individual who is—

(A) a citizen of the United States,

(B) a resident of the State of Hawaii, and

(C) a descendent of the aboriginal people, who prior to 1778, occupied and exercised sovereighty in the area that now comprises the State of Hawaii, as evidenced by—

(i) geneological records,

(ii) Kupuna (elders) or Kama'aina (long-term community residents) verification, or

(iii) birth records of the State of Hawaii.

(4) The term "Indian tribe" means any tribe, band, nation or other organized group or community of Indians including any Alaska Native village (as de-

fined in, or pursuant to, the Alaska Native Claims Settlement Act).

(5) The term "museum" means any museum, university, government agency, or other institution which possesses or has control over, any—

(A) Native American skeletal remains, or

(B) ceremonial object, or

(C) grave goods.

(6) The term "ceremonial object" means any item which is, or has been, devoted to a Native American religious ceremony by an Indian tribe, Native Hawaiian group, or an individual member of such tribe or group and which is necessary for the on-going observance of religious ceremony or ritual by the tribe, group, or its members.

(7) The term "grave goods" means any object which was found in the grave of a Native American or otherwise directly associated with the skeletal remains of a Native American.

(8) The term "Commission" means the Native American Museum Claims Commission established in this Act.

SEC. 4. THE NATIVE AMERICAN MUSEUM CLAIMS COMMISSION.—(a) There is hereby established as an independent agency the Native American Museum Claims Com-

mission. The principal office of the Commission shall be in the District of Columbia.

(b) The Commission shall consist of 5 voting members appointed by the President with the advice and consent of the Senate, who are removeable only for cause.

(c) At least two of the Commission members shall be a Native American.

(d) At least two of the Commission members shall be practicing members of at least one of the following professions: archaeology, anthropology or museum services.

(e) The fifth member of the Commission shall be recommended by the Commission members as selected under subsection (c) and (d), following such recommendation the President with the advice and consent of the Senate may approve the recommendation and nominate or request another candidate to be considered.

(f) Each individual member of the Commission shall be significantly interested and experienced in matters which the Commission shall consider.

(g) No more than 2 members of the Commission shall be of the same political party.

(h) Members of the Commission shall be appointed for a term of four years, except that of the members first appointed, one shall serve for a term of two years; one shall serve for a

term of three years; and one shall serve for a term of four years.

(i) The presence of 3 members of the Commission shall constitute a quorum for the purpose of conducting the business of the Commission.

(j) The Commission shall select, by majority vote, one of its members to serve as Chairperson and one of its members to serve as Vice-chairman who shall serve as Chairperson during meetings of the Commission in the absence of the Chairperson.

(k) The Commission shall meet at least once every four months.

(l) Each member of the Commission who is not otherwise employed by the Federal Government shall receive compensation at a daily rate equivalent to that of level V of the Executive Schedule under section 5316 of title 4, United States Code, for each day such member is engaged in the actual performance of duties as a member of the Commission. A member of the Commission who is otherwise an officer or employee of the Federal Government shall serve without additional compensation; but all members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

Sec. 5. Authorities of the Commission.—(a)(1) The Chairman, with the approval of the Commission shall appoint an Executive Director and General Counsel to the staff of the Commission. The Executive Director and General Counsel shall be paid at the annual rate of basic pay payable for GS–18 of the General Schedule under section 5332 of title 5, United States Code.

(2) The Executive Director shall appoint other staff of the Commission pursuant to the provisions of title 5, United States Code, governing appointments in the competitive service, but such permanent appointments shall be subject to sections 12 and 19 of the Act of June 18, 1934, (25 U.S.C. 472, 479). The Executive Director shall be responsible for the day-to-day administration of the Commission activities, supervision of staff, financial management of the Commission, and such other duties as the Chairman of the Commission may direct.

(3) The Chairman, with the consent of the Commission, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at the rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS–18 of the General Schedule under section 5332 of such title.

(b)(1) Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the person-

nel of such agency to the Commission to assist the Commission in carrying out its duties under this Act, unless otherwise prohibited by law.

(2) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

(c) The Commission is authorized to—

(1) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

(2) procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(3) to the extent feasible, enter into contracts for activities necessary to the discharge of the duties of the Commission;

(4) hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(5) administer oaths or affirmations to witnesses appearing before the Commission;

(6) promulgate such guidelines and regulations as it deems appropriate to implement the provisions of this Act including regulations which will ensure ethical conduct for Commission members, staff and consultants and prevent conflict of interest; and

(7) promulgate guidelines and regulations for repatriation of human remains, ceremonial objects and grave goods consistent with American common law and principles of Federal Indian law.

(8) enter into agreements with the General Services Administration and any other agency of the Federal Government for the procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds appropriated for the Commission.

SEC. 6. AUTHORITY OF THE GENERAL COUNSEL.—The General Counsel of the Commission is authorized, subject to the direction of the Commission, to—

(1) appoint such other attorneys as may be necessary to assist the General Counsel;

(2) represent the Commission in courts of law whenever appropriate;

(3) oversee any investigations the Commission may direct arising from claims brought before it;

(4) submit to the Commission all pertinent evidence, including the full unedited reports and findings of expert consultants or investigators, proposed findings of fact, and proposed recommendations upon which Commission findings and orders may be based; and

(5) perform such other legal duties and functions as the Commission may find necessary to conduct its responsibilities.

SEC. 7. COMMISSION FUNCTIONS.—The Commission functions shall be to—

(1) receive, consider, and determine the facts relative to claims filed under the authority of this Act that involve Native American skeletal remains, ceremonial artifacts, or grave goods;

(2) facilitate negotiated settlements of such claims;

(3) notwithstanding any other provision of law—

(A) issue interim relief, and

(B) issue orders regarding the right to possess such Native American skeletal remains, ceremonial artifacts, or grave goods;

(4) in conjunction with the fiscal cycle of the United States, adopt an annual budget for the expenses and operation of the Commission; and

(5) prepare and submit annual reports, together with minority views, if any, to Congress by December

31 of each year concerning the progress of the Commission, funding recommendations, including such sums as may be necessary for negotiated settlements which the Commission has forwarded to the Congress, recommendations for amendments to this Act, and any other matters deemed appropriate.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year such sums as are necessary to enable the Commission to carry out its functions for such fiscal year, including such sums as are necessary to implement negotiated settlements arrived at as a result of the Commission's activity.

SEC. 9. FILING OF CLAIMS.—(a) The governing body of any Indian tribe, a consortium of tribes or the Office of Hawaiian Affairs of the State of Hawaii may file in such form as the Commission shall prescribe, a claim for the repatriation of any one of the following categories of objects held by a museum:

(1) Skeletal remains which—

(A) are of a Native American who was a member, or was the ancestor of a member, of the Indian tribe or Native Hawaiian group that is a party to the claim; or

(B) were obtained from lands on which the Indian tribe or Native Hawaiian group, its indi-

vidual members, or ancestors of such group that is a party to the claim, had interred human remains.

(2) Ceremonial objects of the Indian tribe or Native Hawaiian group that is a party to a claim or of any individual member or ancestor of such Indian tribe or Native Hawaiian group.

(3) Grave goods which—

(A) were obtained from the graves of members, or the ancestors of members of the Indian tribe or Native Hawaiian group that is a party to the claim; or

(B) were obtained from lands on which the Indian tribe or Native Hawaiian group, or the members or ancestors of such group, had interred such grave goods.

(b) The Commission may hear any and all claims described in this section notwithstanding any statute of limitations or laches.

(c) A claim may be filed only after the earlier of—

(1) the date that is one year after the date on which written notice sent by certified mail of the claim was submitted by the claimant to the party in possession of the items subject to the claim;

(2) the date on which the party subject to the claim submitted written notice sent by certified mail to the claimant expressing a refusal to negotiate; or

(3) the date that is 90 days after the date on which the claimant submitted such notice sent by certified mail to the party subject to the claim and such party has not responded in writing to the claim.

(d) the provisions of this Act shall not apply to any individual collector or any skeletal remains, ceremonial objects, or grave goods owned by individual collectors.

Sec. 10. Negotiated Settlement of Claims.—Within ten business days after a claim has been filed with the Commission, the Commission shall serve notice of the claim on the party alleged to be in possession of the skeletal remains, ceremonial artifacts or grave goods that are the subject of the claim. The claim shall not be made public by the Commission. After giving notice, the Commission shall encourage and attempt to negotiate a voluntary settlement of the dispute and shall make its good offices available to that end. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees.

Sec. 11. Certification of Negotiated Settlements.—When a voluntary negotiated settlement of a claim brought before a Commission is achieved and is acceptable to *all parties subject to a claim, the Commission shall certify the voluntary settlement in such form as the Commission may prescribe. If necessary, the Commission shall forward a report any settlements to Congress for such action as is appropriate.*

SEC. 12. If the respective parties to a claim fail to arrive at a negotiated settlement of the claim pursuant to the conditions of section 9, within 120 days after the filing of such claim with the Commission, the Commission shall take such action as it deems advisable to resolve such claims.

SEC. 13. INVESTIGATION OF CLAIMS.—For all claims brought before the Commission which are not resolved through a negotiated settlement the Commission shall utilize such Commission staff or consultants who are deemed to have the requisite background and experience to investigate the facts pertaining to each claim and render competent findings and recommendations to the Commission on a particular claim or claims.

SEC. 14. SUBPOENA AUTHORITY.—(a) The Commission may authorize the Chairman to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter which the Commission is empowered to investigate by this Act. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

Such attendance of witnesses and the production of such evidence may be required from any place within the United States at any designated place within the United States.

(b) If a person issued a subpoena by the Commission pursuant to this section refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may, upon application of the Commission, order such person to appear before the Commission to produce evidence or give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(d) All processes of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

(e) Any party to a claim filed with the Commission under this Act may, upon the filing of such claim, request the Commission to issue such subpoenas under this section as

may be necessary to enable such party to conduct discovery to the same extent discovery is permitted under the Federal Rules of Civil Procedure.

SEC. 15. PRELIMINARY ORDERS.—For each claim that is considered, the Commission shall, on the basis of the evidence disclosed in the claim, or any investigation the Commission may conduct, issue a preliminary order containing findings of fact and determinations of the right to possess the objects that are the subject to the claim. Such findings of fact and determinations of the right to possess items that are the subject of a claim and any repatriation recommended by the Commission shall be based on the evidence disclosed in the investigation.

SEC. 16. DISMISSAL OF CLAIMS.—If the Commission determines, on the basis of the evidence disclosed in the claim or any investigation the Commission may order, that there is no basis to substantiate the claim of the Indian tribe or Office of Hawaiian Affairs to the objects subject to such claim, the Commission shall dismiss such claim.

SEC. 17. CONDITIONS FOR REPATRIATION ORDER.—If the Commission determines that repatriation of an object is supported by the facts disclosed in the investigation of a claim, its order shall—

(1) to the maximum extent possible, provide for conditions which will protect the objects subject to repa-

triation from future loss or alienation, but only to the extent such conditions are compatible with the religious and cultural and practices of the Indian tribe or individual, or Native Hawaiian group or individual, determined to have the right to possess the item; and

(2) to the maximum extent possible, provide for historical preservation efforts, such as photography, replication, scientific analysis or study or other means, to mitigate the loss of the item in question by the museum in possession of the objects subject to repatriation, but only to the extent such mitigation measures are compatible with the religious and cultural values and practices of the Indian tribe or individual, or Native Hawaiian group or individual determined to have the right to possess the objects.

SEC. 18. NOTICE OF PRELIMINARY ORDER.—The Commission shall submit a copy by certified mail of any preliminary order issued to each party to the claim, together with notice that the order will become final if within 30 days no party files a written objection to the order with the Commission.

SEC. 19. HEARINGS ON PRELIMINARY ORDERS.—Upon receiving a written objection citing the basis of the objection to a preliminary order from any party, the Commission, acting through one or more of its members shall, within

60 days, conduct a hearing to provide affected parties the opportunity to show cause why its preliminary order should or should not be made final. The testimony taken during such hearing shall be transcribed and filed with the Commission.

SEC. 20. FINAL ORDERS.—Within 30 days after completion of any hearing required under section 19, and after evaluating the evidence, the Commission shall issue a final order to resolve the claim in question. The Commission shall provide each party to the claim a written copy by certified mail of the final order of the Commission determining which party to the claim has the right to possess the items in dispute.

SEC. 21. NONCOMPLIANCE AND FINES.—If the Commission determines that any final order to resolve a claim is not being carried out, it shall give written notice of noncompliance to the party alleged not to be complying with the order. The Commission shall have the authority to impose a fine not to exceed $500 for each day of noncompliance subsequent to such notice for which it finds no just cause.

SEC. 22. Any notice of noncompliance issued by the Commission shall be sent by certified mail and shall be effective on the date on which the aggrieved party receives such notice.

SEC. 23. APPEAL OF FINAL ORDER.—Decisions made by the Commission pursuant to this Act shall be final agency *decisions for purposes of appeal to the appropriate United States district court pursuant to chapter 7 of title 5, United States Code. The court shall have jurisdiction to grant such temporary relief as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission. The findings of the Commission with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole.*

SEC. 24. APPEAL OF FINES.—Any party aggrieved by an order assessing a civil penalty under section 21, may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such party resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such fine was received by the aggrieved party. The court shall hear such action on the record made before the Commission and shall sustain the Commission's action if it is supported by substantial evidence on the record considered as a whole.

SEC. 25. COLLECTION OF FINES.—If any party fails to pay a fine—

(1) after the order imposing such fine has become a final order and such party has not filed a petition for

judicial review of the order in accordance with section 23,

(2) after a court has entered a final judgment upholding the imposition of the fine pursuant to section 23, the Commission may request the Attorney General of the United States to institute a civil action a district court of the United States for any district in which such party is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such fine shall not be subject to review.

SEC. 26. AUTHORITY FOR COMMISSION REPATRIATION.—The provisions of the Act of June 8, 1906 (34 Stat. 225, chapter 3060; 16 U.S.C. 431, et seq.), the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa), and any regulations prescribed under such Acts, shall not apply to—

(1) any action taken by the Commission or a Federal court under this Act, or

(2) any Native American skeletal remains, ceremonial objects, or grave goods that—

(A) are the subject of a claim filed with the Commission under this Act by any Indian tribe,

consortium of Indian tribes, or the Office of Hawaiian Affairs of the State of Hawaii, and

(B) are repatriated to such Indian tribe, consortium, or Office.

SEC. 27. SEVERABILITY CLAUSE.—If any provision of this Act, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

The **Chairman**. The amendment that we consider this morning would establish a Native American Museum Claims Commission Act and would set up an orderly process for the register of claims to Native American skeletal remains or cultural artifacts.

The commission's primary objective would be to work with the parties to the claim to attempt to reach a negotiated settlement of the claim. Failing such efforts, the claims commission is authorized to issue subpoenas, receive evidence, investigate the claim, and issue its findings in the form of a preliminary order.

Should either party object to the commission's finding, a formal hearing on the record is authorized from which a final order will be issued. Appeal of the final order to Federal district court is also authorized.

The repatriation of Native American skeletal remains and the other artifacts of religious and cultural significance is a highly emotional issue and one which has been subject to much debate. History would indicate that at least some of the skeletal remains and precious items of Indian tribes were acquired under questionable means and, where they are subject to a valid claim, should be returned to the claimants.

We hope that this hearing this morning will shed further light on an area that has been neglected for far too long. It is my strong belief that the native people of this country must and should have access to those things which represent the rich cultural legacy that belongs to this Nation's first Americans.

Senator Melcher will be arriving shortly, but, as most of you are aware, at this moment the U.S. Senate is considering the agricultural bill which is extremely important to those who are suffering from the present drought. Therefore, we will keep the record open for Senator Melcher to make his remarks.

[Prepared statement of Senator Melcher appears in appendix.]

The **Chairman**. However, in the meantime, I will call upon the first panel consisting of the Deputy Under Secretary Dean Anderson of the Smithsonian Institution; Mr. Michael Fox, member of the governing board and director of the Heard Museum of Phoenix, Arizona; and Ms. Cheryl Ann Munson, chairman, government affairs, Society for American Archaeology.

Mr. Anderson, would you care to begin?

STATEMENT OF DEAN ANDERSON, UNDER SECRETARY, SMITHSONIAN INSTITUTION, WASHINGTON, DC

Mr. **Anderson**. You have my formal testimony. Let me summarize from it briefly.

The **Chairman**. May I advise everyone that your full text of all statements will be made part of the record.

Mr. **Anderson**. Thank you, Mr. Chairman.

I appreciate very much the opportunity to appear here before you today to comment on Senator Melcher's amendment to S. 187. The Smithsonian Institution respectfully opposes the amendment, but in doing so it seems appropriate to recall the remarks of Secretary Adams at the hearing in February 1987 on the original measure.

At that time he acknowledged the good intentions behind the legislation, but suggested then, as we would now, that it is probably unnecessary and in any case still premature. The continuing interest in the issues addressed in S. 187 and the diligent efforts that have been made to accommodate the varying points of view surrounding them are evidence of the ongoing quality of those intentions.

It would seem, however, Mr. Chairman, that such interest and effort, as well as the leadership that you and others have provided over the months since that initial hearing may have reduced even further the necessity for legislation.

The primary reasons for this circumstance are found in the responses of the museum community itself and the Smithsonian in particular to the issues that you have set out. At the Institution this response has taken several forms, all of which reflect a heightened understanding of and sensitivity to the perspective of American Indian people and the commitment to accommodate expressions of those perspectives insofar as it is possible for us to do.

As the Secretary reported last year, in November of 1985 we contacted the chairmen of the 225 federally-recognized tribes to inform them of our holdings of American Indian skeletal remains derived from their general geographical areas and to describe our methods of storage and visitor access.

To date, 19 inquiries from tribes and other nontribal sources have been received. We have replied to all of them, and in some instances have had subsequent exchanges of correspondence.

To date, only the Blackfeet have sought to pursue identification and repatriation of remains. In addition, an extensive search of records at the Smithsonian's National Museum of Natural History for named individuals in our collection has revealed that remains of 14 individuals from other tribes besides the Blackfeet also are included.

The names of the individuals and information about them have been furnished to the tribes with which we believe they were affiliated. Thus, we hope to locate direct descendants and to ascertain their wishes with respect to the disposition of the remains.

So far, we have had a letter from one of the tribes, the Ogalala, but have yet to learn whether or not living descendants exist.

With respect to ethnographic materials, since February of 1987, the last hearing date, we have had two inquiries. Each has required substantial research into collections documentation and related historical data which has resulted in varying degrees of ambiguity about the objects and their acquisition.

At the present time we are seeking further information from our correspondents in an effort to arrive at more certain conclusions. I should acknowledge here that there have been problems of timeliness on our part in responding to inquiries and in conducting the research that I have mentioned.

The tasks associated with the latter are extensive and are additive to established obligations of the staff that must address them. As a result, requests for information have not been handled as timely or as promptly as we would have wished. To ameliorate the situation, we have requested authority from both the House and the Senate to reprogram a sum of $200,000 in our fiscal year 1988 appropriation and direct it to this purpose.

The money originally was provided for a feasibility study relating to possible locations for the Museum of the American Indian, Heye Foundation. Inasmuch as it is evident that the museum currently can be located only in New York, such a study would seem to be an inappropriate use of Federal funds at this time.

If our request is granted, we anticipate hiring additional researchers to assist in the identification of skeletal materials and ethnographic objects, as well as in the organization and analysis of museum records, so that we will have a fuller understanding of the nature, range, and origins of our collections and a capacity to respond more expeditiously to those who have interests in them.

The tasks of identification are crucial, of course, to any consideration of repatriation of material in museum collections. These tasks must of necessity precede all others if repatriation is to proceed in a manner that meets the concerns of all of the parties involved.

Open lines of communication are also significant elements in the process because information must flow freely between the parties, and the interests of each must be known to the other. These efforts are, we believe, well in keeping with the spirit of the proposals in the bill and consistent with the concepts that Secretary Adams outlined in the two columns in *Smithsonian* magazine that are appended to my testimony.

Encouraging a process in which institutions and tribal representatives work cooperatively on matters that are highly individualistic and susceptible to resolution only on a case-by-case basis seems preferable to one which is inherently adversarial, expensive, time consuming, and for which there appears to be no substantial requirement.

Furthermore, we have been advised that the Department of Justice has various concerns about the proposed amendment and will be communicating them to the committee by letter. In view of the foregoing, Mr. Chairman, I would respectfully request that the authorities proposed not be pursued at this time.

[Prepared statement of Mr. Anderson appears in appendix.]

The CHAIRMAN. All right. Thank you very much, Mr. Anderson. Just a few questions for the record.

Mr. ANDERSON. Certainly.

The CHAIRMAN. At this moment how many skeletal specimens or skeletal remains are held by the Smithsonian?

Mr. ANDERSON. Approximately 33,000 from all centuries, all parts of the world.

The CHAIRMAN. Of those skeletal remains that are of rather recent age, let us say 150 years or less, of the 30,000, how many would that be?

Mr. ANDERSON. Approximately 620 where tribal identifications are tentatively established by written documentation, primarily from the Army Medical museum.

The CHAIRMAN. What is the present status of those 620?

Mr. ANDERSON. They include, among that 620, 5 Modoc crania that were returned to the tribe in Oregon in June 1984, an additional set of remains of 16 individuals which will be returned to the

Blackfeet next month, and a further set of 14 remains that our research to date has been successful in cross-referencing between the skeletal materials themselves and the records to result in good certainty that they represent named individuals.

The **CHAIRMAN**. Would I be correct in stating that in the last 50 years the Smithsonian has returned 21 skeletal remains to Indian tribes?

Mr. **ANDERSON**. If one were to add together that which will happen next month, I believe that's correct, Mr. Chairman.

The **CHAIRMAN**. Twenty-one in the last 100 years?

Mr. **ANDERSON**. I think that's correct.

The **CHAIRMAN**. Why does the Smithsonian need 30,000 specimens?

Mr. **ANDERSON**. There have been a number of attempts to put in writing, internal to the Smithsonian as well as for our external audience, a full and complete listing of all of the kinds of research physical anthropologists pursue and the kinds of benefits that society as a whole might reap from that research. The efforts have resulted in a variety of formats. A good part of the Secretary's testimony last year concerned precisely that matter.

There have been increasing reports in the press as well, as national interest has heightened on this issue. There have been a number of good summaries of present-day physical anthropology research. I would be happy to supply those for the record if that would be useful to the committee.

The **CHAIRMAN**. Do we have comparable collections of, say, Asian skulls or African skulls in the United States?

Mr. **ANDERSON**. In our collection, sir, yes.

The **CHAIRMAN**. What do you have in your collection?

Mr. **ANDERSON**. At the Smithsonian? Let me recite some statistics and see if this is responsive to your question.

About 55 percent of our collection, roughly 18,300 skeletal remains, are Native North American. Included among those are about 4,000 representing Aleut, Eskimo, and Kodiak groups from Alaska. The remainder of the collection, the remaining 45 percent, includes black and white Americans (about 17 percent of the collection), and populations from elsewhere in the world (about 28 percent of the collection). That 28 percent, of course, would include remains from Asia, from Africa, from Europe, and elsewhere.

The **CHAIRMAN**. And it is your position that the Smithsonian has to maintain 18,500 skeletal remains to carry on its studies?

Mr. **ANDERSON**. Each of those remains, Mr. Chairman, can perhaps be analogized to a reference book. Techniques are constantly being refined in the physical sciences to unlock the information that's present in each one of them. Each one, if you will, is like a dictionary with many pages, but we haven't learned how to open each of those pages yet.

The **CHAIRMAN**. From what you tell me, this study is extremely important in the interest of mankind. Are we also making collections, ongoing collections, for skeletal remains at this moment?

Mr. **ANDERSON**. Yes, indeed. We received earlier this year a collection of some 600 individuals from a German American cemetery outside of Pittsburgh. They will be studied for approximately five years, and their disposition at that time will be determined.

The **Chairman**. What will you do with that?

Mr. **Anderson**. Well, they could be returned for reburial to the church that has turned them over to us or they could be kept in the national collections. A determination I believe will be made at the end of the study period.

The **Chairman**. Once you have completed your study on an Indian skull, what do you do with it?

Mr. **Anderson**. If it is already in our collections rather than on loan from some other source, it remains in the collection.

The **Chairman**. How did you acquire these remains?

Mr. **Anderson**. Many different ways, Mr. Chairman. A good number of them came in the middle part of this century from archeological digs that were conducted as part of the various river basin surveys prior to the Corps of Engineers, for example, building a dam that would have submerged a large tract of land; or from highway surveys, actual highway construction; individual archeological digs that Smithsonian staff themselves may have been participants in; from a variety of sources.

The **Chairman**. How did the U.S. Army acquire the approximately 5,000 skeletal remains during the Indian War?

Mr. **Anderson**. The remains were, I think, acquired not just during periods of war, Mr. Chairman. Many of the remains in question were of archeological historic—or a prehistoric period, pardon me—dug up from——

The **Chairman**. How many were acquired during the Indian Wars?

Mr. **Anderson**. I do not know that answer, Mr. Chairman. I'd be happy to try to find it and supply it for the record.

The **Chairman**. It is over half, isn't it?

Mr. **Anderson**. I do not know.

[Material to be supplied follows:]

Of 4,170 specimens transferred from the Army Medical Museum to the Smithsonian Institution between 1898 and 1910, only 77 represent American Indians who died while imprisoned or were slain in battle, hung, shot while trying to escape, or otherwise killed by soldiers of the U.S. Army during the period of the Indian wars. An additional 33 represent Indians killed by other Indians, either during battle or as the result of quarrels.

The remaining 4,060 specimens were obtained through archeological excavation or were collected from populations outside of the United States.

The breakdown of the 4,170 specimens from the Army Medical Museum is as follows:

Native North American (United States):	
Tribally-documented	620
Prehistoric	2,450
Native North American (Canada/Greenland)	90
Native South/Central American	482
Native Hawaiian	154
Modern Black/White North American	96
All other (Old World)	278
Total	4,170

The **Chairman**. Do you know how they were acquired?

Mr. **Anderson**. Which, sir?

The **Chairman**. The collection of the U.S. Army, were they professionally gotten together by archeologist going through scientific diggings or were they taken off the battlefields or from graves?

Mr. ANDERSON. I think all three sources, sir. Archeology, of course, was a very young science at the time.

The CHAIRMAN. Is it that important that we maintain in Washington a collection of 18,500 skeletal remains? You have had many decades to study them. How many more years do you need to study these skulls and skeletal remains?

Mr. ANDERSON. Competent scientists would say, I think, Mr. Chairman, that they ought to be maintained indefinitely for the information that is remaining locked inside of them to be uncovered by future generations.

The CHAIRMAN. In other words, you have no desire to return these remains to the individual families or the tribes?

Mr. ANDERSON. To the contrary, Mr. Chairman.

The CHAIRMAN. Well, you have returned only 21 in 100 years.

Mr. ANDERSON. Your words in introducing this subject I think are ones that we can subscribe to wholeheartedly: in instances when there was questionable acquisition and where there is also valid claim by present-day Native Americans, we are honor bound, duty bound, conscience bound to enter into serious discussions with the appropriate parties and work toward resolution of the repatriation issue.

The CHAIRMAN. Have you done this?

Mr. ANDERSON. We continue to do so, sir.

The CHAIRMAN. But the process must be a very tedious one.

Mr. ANDERSON. The process requires certainty, sir, to make sure that the appropriate materials are returned to the appropriate parties.

The CHAIRMAN. By "appropriate parties," what do you mean?

Mr. ANDERSON. In the obvious first instance, for example, the 14 remains that have now been reasonably conclusively demonstrated to be identified by name by matching the records and the actual physical remains themselves, we have written to the tribes from which we think those people originated asking their support and help in finding direct descendants. If those direct descendants can be found and wish the remains returned, of course they will be returned. If there are no direct descendants and the tribe itself would prefer those remains returned, we would, of course, return them.

The CHAIRMAN. Senator Melcher.

Senator MELCHER. Thank you, Mr. Chairman.

Mr. Anderson, what legal authority are you basing your acquisition of skeletal remains on?

Mr. ANDERSON. The Smithsonian's basic authorization is found in title XX of the United States Code, Senator.

Senator MELCHER. Are you basing your answer on some existing legal authority?

Mr. ANDERSON. With regard to everything that we collect, the authorities are present in title XX; yes, sir.

Senator MELCHER. You just mentioned that you're going to look at some remains from some church cemetery.

Mr. ANDERSON. Yes.

Senator MELCHER. That's legally done; right?

Mr. ANDERSON. Yes.

Senator MELCHER. What authority? What law?

Mr. **Anderson**. Well, in this instance, Senator, the people who were custodians of those remains asked us to look at them.

Senator **Melcher**. Absolutely. You have law, have you not?

Mr. **Anderson**. I'm sorry?

Senator **Melcher**. You have law in the case of the church cemetery. There is law, isn't there?

Mr. **Anderson**. I'm not sure what your question refers to.

Senator **Melcher**. You just said that the church is a custodian, the legal custodian of the remains.

Mr. **Anderson**. Yes.

Senator **Melcher**. I agree. Now I'm asking you under what legal authority you believe that the Smithsonian or any other museum has authority, legal authority, to keep the remains of some individual Indian.

Mr. **Anderson**. I'd be happy to supply the direct citations for the record, sir.

Senator **Melcher**. Well, let me point out, Mr. Anderson, that this broad authority of the Smithsonian does not cover specifically the authority to hang on to the remains of some Indian contrary to the wishes of the Indian family, the descendants of that Indian——

Mr. **Anderson**. I agree with that.

Senator **Melcher** [continuing]. Or the tribe. The tribe does have legal authority, does it not?

Mr. **Anderson**. I agree with you.

Senator **Melcher**. Do you recognize that?

Mr. **Anderson**. I agree with you. Yes, you're absolutely correct.

Senator **Melcher**. Then what legal procedure would you have the country follow, some vague authorization which is not specific and which is not authorization—some vague authorization for the Smithsonian that is not directly to the point of whether or not you have the legal authority to hold the remains of some Indian contrary to the wishes of either the Indian's family or the tribe?

Mr. **Anderson**. I'm not aware that we are holding any remains right now contrary to the wishes of a descendant's family.

Senator **Melcher**. Then why do you testify against the bill?

Mr. **Anderson**. We believe, sir, that it is unnecessary.

Senator **Melcher**. Well, you believe it's unnecessary, but that's judgment that Congress must make on behalf of the people of this country.

Mr. **Anderson**. Yes, sir.

Senator **Melcher**. And might I point out to you that using your example of how you would acquire the remains from some old cemetery where the church is recognized as a legal custodian which agrees with whatever you want to do with the remains of those individuals, to the contrary, with the Indian tribes you have no such agreement. There is no legal authority granted by Congress that says a museum may hold the remains of an Indian contrary to the wishes of the Indian's family, the descendants, or contrary to the wishes of the tribe. That's all the bill does, sets out the procedure to where the tribe can file or the descendants of the deceased can file to regain the remains of an Indian.

Mr. **Anderson**. We are actively engaged, sir, with tribes that have requested the repatriation of remains.

Senator **Melcher**. And you don't want a commission to interfere, because the bill simply says that if there is a voluntary agreement between the Indian's descendant or the tribe to let them remain with the Smithsonian or some other museum, then that's fine. But if there is a disagreement, it sets up the procedure for the commission to arbitrate, how that disagreement will be resolved.

On one hand, you're in favor of it and, on the other hand, you don't want legislation.

Mr. **Anderson**. Well, the intent of the legislation, Senator, is something that we endorse wholeheartedly.

Senator **Melcher**. Well, I'm glad to hear that, because that's what Congress has to deal with—what's proper and correct.

I find it distasteful to have the Smithsonian say, on one hand say we're in favor of it and on the other hand say we don't think it's necessary. The question of whether it's necessary or not is not one for the Smithsonian or some other museum; it's for Congress to decide. There's plenty of evidence that we have reviewed that indicates that all too often the tribes are thwarted, in some cases even the individual descendant's, families of the deceased, are thwarted, by the museums pushed aside by some procedure.

You have 18,000 skeletal remains, I believe, of Native Americans; is that not correct?

Mr. **Anderson**. That's correct.

Senator **Melcher**. Well, I'm glad you're in favor of the intent because I think that's what Congress has to determine in their own judgment, whether or not we're going to follow the same procedure as we would with anybody else.

Surely, Mr. Anderson, if it were your grandparents or great grandparents that were involved, you would feel that your family had some rights to reclaim the remains; would you not?

Mr. **Anderson**. Yes, indeed, and we are actively——

Senator **Melcher**. Thank you.

Mr. **Anderson**. Thank you, sir.

The **Chairman**. Mr. Fox.

STATEMENT OF MICHAEL FOX, MEMBER, GOVERNING BOARD, DIRECTOR, HEARD MUSEUM, PHOENIX, AZ; AND REPRESENTING THE AMERICAN ASSOCIATION OF MUSEUMS, WASHINGTON, DC

Mr. **Fox**. Good morning, Mr. Chairman, members of the Senate Select Committee on Indian Affairs, and staff.

I appreciate this opportunity to appear before you today to provide testimony on the amendment to Senate bill 187, the Native American Claims Commission Act. I represent the interests, concerns, and cooperative spirit of our Nation's museum community. As a member of the governing council of the American Association of Museums, as president of the nine western States' museum professional association, the Western Museums' Conference, which is in the region of our country with the single largest concentration and population of Native American communities, and as director of the Heard Museum in Phoenix, Arizona, a nearly 60 year old, nationally respected, wholly privately governed and funded, anthropological institution dedicated to the sensitive portrayal of the beauty and diversity of Native American material culture, life ways, art, spirituality, language, and traditions.

The estimated over 1,000 museums in the United States which today serve as trustees of Native American collections owe Senator Melcher a debt of gratitude for his introduction in January of 1987 of Senate bill 187. I believe the intent of the proposed bill and its amendment is already being largely realized through this initiative.

Nationwide, museums and their staffs—archeologist, physical anthropologists, and ethnologists—and even the general public, are demonstrating a renewed commitment of mutual cooperation and trust with Native Americans on matters regarding the collection, preservation, documentation, exhibition, and repatriation of Native American ceremonial artifacts and human remains.

The museum I direct and many others provide examples of the cooperation and sensitivity. Nearly 10 years ago the Heard Museum instituted in its collection policy a formal procedure to respond to requests for the return of sacred objects. Very simply, each request would be considered on a case-by-case basis.

Elsewhere in Arizona, a State where there are 18 tribal governments, museums have consistently shown responsibility, encouraging amicable, trusting, cooperative relationships and open communication with out Native American communities and cultural leaders.

We have positive partnerships. For instance, sacred objects have intentionally been placed in the Museum of Northern Arizona's care by the Hopi authorities. At the Heard Museum we are currently serving as the intermediary in the transaction of returning to the Navajo Nation a sacred medicine bundle which is in the hands of a private collector.

Approximately 6 years ago our museum called in Hopi spiritual leaders to examine our collections. When religious objects were identified, we worked together not with the suggestion to return to the objects, but to have the museum assure their well being consistent with Hopi belief.

Similarly, when in this past year the Heard Museum received an internationally-touring exhibit of native American artifacts, our curatorial staff, including native American personnel, removed from exhibitry an object which they identified as potentially culturally insensitive.

In Tucson, at the Arizona State Museum recent experiences in providing collection information to Indian communities necessitated the employment of an individual to manage such requests. All these are strong examples that show the ongoing caring and serious manner in which certain museums are approaching their trusteeships. Numerous other museums' positive working relationships and experiences are recorded in the written testimony.

Because of Senator Melcher's initiative and the increased sensitivity of museums toward the repatriation issue, in 1988 the American Association of Museums formulated a repatriation policy and did so with a task force of eight individuals, three of whom were native Americans.

This policy provides museums with guiding principles. The policy states that only by a case-by-case approach can proper consideration be given to the diversity of specific Native communities and the ethical, adjudicatory, and legal responsibilities of individual museums.

It further calls for museums to demonstrate sensitivity and respect for the meaning and value of Native American materials within the context of each museum's mission to preserve, interpret, and exhibit its collection.

Also, the Repatriation Policy of American Association of Museums deplores museum acquisition of Native American material by illegal or unethical means over the course of history. It stresses the need to judge the method of acquisition against current laws and ethical standards.

Furthermore, the policy recommends that museums consider separate and distinct criteria for returning ceremonial objects from those of human remains. There is now a national movement to create appropriate museum collection policies to work with Native Americans and all other groups that have special interest in their collections and to be more responsive to these communities. It has dramatically taken hold.

But the Native American Museum Claims Commission Act is not the answer to those legitimate repatriation concerns of Native Americans. It retains the creation of a Federal adjudicatory body, a need which has not been either proven or concurred by the majority of the tribal governments.

Additionally, we believe several provisions from the substitute amendment would be costly and burdensome to museums, to Native Americans, and to the Federal Government and would allow the claims commission to intervene unnecessarily in negotiations.

We are not in favor of the act on the grounds that such a body would alienate the two communities, placing the relationship between museums and Native Americans in adversarial context and would remove the authority and rights of museums in determining the fates of their collections held in public trust.

Cultural distinctiveness and religious integrity will not be realized through this proposed Federal legislation. The answer could come out of federally promoted programs which captures the momentum, the enthusiasm, conviction, and commitment shown by so many, including the American Association of Museums, the museum community, professional groups in the sciences of anthropology, archeology, ethnology and museumology to sensibly, creatively, and responsibly work together with Native Americans on the social and moral responsibilities of our museums which serve as voices of all American constituencies.

I submit to you, Mr. Chairman, to Senator Melcher, and to the entire Senate select committee, and the constituency of Native American voice that we enter into an immediate and intense yearlong dialog on the identification, use, care, and ownership of Native American materials.

I have discussed this idea with the renown School of American Research in Santa Fe, New Mexico, and they have offered their facilities and resources to create the forum for such incredibly important research and discussion which will result in the development of an initiative appropriate to the future integrity and legacy of American museums as well as the Native American cultures.

Thank you.

[Prepared statement of Mr. Fox appears in appendix.]

The CHAIRMAN. Senator Melcher.

Senator MELCHER. I only have this point: Mr. Fox, your concerns are that (a) it might cost money for museums and (b) it might alienate the two sides. Is that correct?

Mr. FOX. Those are two of our concerns, indeed.

Senator MELCHER. What's the third concern or fourth concern?

Mr. FOX. Certainly, sir, we have seen that on the more personal and intimate case-by-case basis, such negotiation take place.

Senator MELCHER. Well, the bill, of course, identifies case by case a basis as the only means of reclaiming the remains or sacred artifact.

Mr. FOX. Yes, sir; yet, of course, with the commission as proposed, they ultimately would be the arbitrators. We feel that there must be people that have much more extensive knowledge, understanding, respect, and sensitivity for the particular cultural group that we might be arbitrating with. I think that with the three-member commission as proposed there could be a problem with the remoteness, if you will, of where these people and their experiences have been to the particular issue at hand.

Senator MELCHER. Well, on the question of whether or not land issues could be resolved in order to avoid unending litigation between numerous tribes and the United States Government, Congress set up a commission to do that. While we had to extend the life of that commission several times in order for them to conclude their work, this is a matter that's much more sensitive on how the remains of individual Indians and sacred artifacts could be returned to the rightful owners.

The commission, of course, would have to have the expertise available to them on a case-by-case basis, hiring archeologists and other professionals to assist them. I don't know of any better framework, legal framework.

You admit, I guess, Mr. Fox, in your testimony that remains and sacred artifacts were obtained illegally. There was no basis in law for obtaining them. Is that not correct? That's right?

Mr. FOX. I would like to have the question repeated, please.

Senator MELCHER. Does not your testimony admit that museums have remains of individual Indians and sacred artifacts of tribes obtained illegally?

Mr. FOX. We believe that there are cases, indeed, that suggest that.

Senator MELCHER. Yes.

Mr. FOX. And we deplore that.

Senator MELCHER. Yes.

Mr. FOX. And we want to change that.

Senator MELCHER. And you want to change it without a legal framework?

Mr. FOX. Well, sir, we haven't really said that. We would like to have an opportunity to have an intense discussion and involvement of different factions and professions that, indeed, such a bill would ultimately involve to help provide to this committee the very best of recommendations for such an initiative that may well be somewhat different from the proposed act or it may well have some very similar provisions to the current proposal.

Senator MELCHER. Well, all I can say is that some 30 years ago Congress decided in order to settle Indian claims that a commission would be formed to avoid unending litigation. I think waiting three decades to figure out what to do about something more sensitive and more personal—that is, the remains of individual Indians and sacred artifacts that tribes use for ceremonial purposes, some of which are religious purposes—I think that's long enough.. The time has come now where Congress sets the legal mechanism for resolving these issues without forcing the tribes or individual Indian families into unending litigation. That's all the bill attempts to do.

You mentioned 6 months is not long enough for the museums to document. What would you think would be long enough, 1 year?

Mr. FOX. At least, sir.

Senator MELCHER. At least 1 year? That's a concrete suggestion, probably worth noting and worth incorporating in the bill.

But I think the bill is very clear that it would have to be a case-by-case determination and very clear on the responsibility of the Commission to review all pertinent information.

But there will be a lot of lawsuits, as you can envision, that will follow unless we set up a legal procedure. Then museum after museum will be involved in litigation on whether or not they legally had acquired the remains.

Mr. FOX. May I respond to that, sir?

Senator MELCHER. I wish you would, yes, please.

Mr. FOX. Just as an example of costs incurred in providing information and documentation for the native American community, the example which I cited, the Arizona State Museum in Tucson, they expended over $30,000 plus staff time just to provide documentation to one element of one tribe in southern Arizona on one request.

Our museums nationwide do not have yet the sophistication to the degree that computerization today could afford us. So many of us, of course, are operating on shoestring budgets as it stands now, and to involve to the extent as the act is suggesting would, indeed, be costly not only in the litigation area which you referred to, but certainly in other areas of management, recordkeeping, and response to the particular requests through the commission. I would hope that this committee appreciates those added costs in the operation of our institutions as a result of such a proposed act.

Senator MELCHER. Well, your citing the cost of $30,000 is something that was arbitrated without a lawsuit.

Mr. FOX. That was only $30,000 to develop the information of classifying the materials that that institution has in its holdings and to provide it in such a manner that is understandable and with clarity is provided back to the Indian tribe. That was merely providing the documentation on such a collection.

Senator MELCHER. Well, might I point out that that's a very minimal amount. If there would have been a lawsuit, you've have the $30,000 plus court costs which would be probably greatly in excess of $30,000. You'd have that original $30,000 for documentation. You'd have the cost of the legal protection or legal defense, and on the other side the tribe would have their own costs in going to court on it.

I think that we're at the point now where Congress can no longer ignore the problem, but must have a formula and must have set in law a procedure for ending the disputes that are out there. Of course, I suspect you would answer just the same as Mr. Anderson, that if it were your own grandparents or great grandparents whose remains were in a museum, you would seek some remedy, legal remedy, for getting them away from the museum.

Mr. Fox. Yes, sir; I think the challenge for all of us is, first, to identify the nature of this problem and the degree to which it is a problem in the field as exemplified by those citings which I provided this committee. We in the west have a difficult time listing examples of heated and unresolvable relationships and requests from our Native American communities.

We have this partnership and a very ongoing, open, and positive relationship. I think that our proposed dialog would help to define further the nature of this problem and what we could contribute to this committee in suggesting other courses to follow.

Senator Melcher. That is appropriate after Congress has set the legal framework for the solution to these problems rather than leaving it open ended where the litigation on separate claims is unending.

The format in this particular procedure with a commission in charge is perhaps the most fair and equitable to both sides that I can envision. It would avoid the litigation that you might all be faced with museum after museum in unending lawsuits, which I think would be very costly and would be much more antagonistic than having the framework of a commission to resolve and arbitrate out the facts.

I say this very seriously because I don't believe the museums themselves recognize the vulnerability they're in. Tribes have been patient and individual families have been patient. I'm not unaware that there has been some progress in the last year since we introduced this bill, but I think the time to fish or cut bait is upon Congress and, unless you can convince us of a better procedure, we'll have to do what I think is necessary for Congress to do and take the responsibility for establishing a framework that allow for the return of the remains and the ceremonial artifacts.

Mr. Fox. Senator, May I respond?

Senator Melcher. Certainly.

Mr. Fox. As an example further of the way in which museums in this past year alone or over a number of years there has been, indeed, a dramatic change in—I wouldn't want to say as a result of the vulnerability, but as a result of institutions' understanding of our responsibility, indeed, to this entire issue.

Most recently, in this past year, since the passage of our repatriation policy at the American Association Museum, we have received scores of inquiries and requests to provide techno-assistance to the museums throughout North America on how to establish appropriate repatriation policies within their own governance. I think this is a tremendous example of the level of consciousness and consciousness that institutions and their governance are showing to this issue. It is not in a reactionary way; it has been a very positive, forward thinking, and certainly responsible position that they realize they must be assuming.

While there are like museums around the country to the Heard Museum where this has been a modus operandi for some time, there is no question that there are other institutions, and many others, that need to come up to today's standards and principles of the subject that we're talking about. I really think that there is a national movement within our museum profession to be more on the mark than we have in the past. I think that's an extremely positive result from your initiative, sir.

Senator MELCHER. Well, I appreciate that. I would note that the bill provides explicitly for that type of voluntary procedure to be followed before it's ever necessary to come before the commission. To the extent that the individual families and the tribes have confidence in the individual museum's efforts to resolve it voluntarily, that, of course, would be followed. That is envisioned by the bill and the intent of the bill would therefore, make it unnecessary for the commission to exercise any authority in arbitration.

On the one hand, you testified in favor of that procedure; on the other hand, you say that you need more time. It's on that time basis that Congress must respond. Is it time now to have a legal procedure for the returns. I think that's the issue.

The bill is not very arbitrary or very forceful in arriving at that point. It simply says that if there isn't any voluntary agreement, and the tribes want to exercise their rights in a quicker way because they are not confident that the individual museum is going to recognize their rights, they can go before the commission as another step. Then the commission will attempt to get a voluntary agreement under their own auspices before they exercise any further authority.

I note you that 6 months is too short, that a year would be better, maybe not enough, but that's from your point of view. That's a point that I think is very constructive testimony in your behalf.

Second, I note that you said that at least one member of the commission should be a person who has expertise and a wide range of experience in these matters from the museum's point of view and the archeologist's point of view. I think that's a very constructive recommendation also and one that I favor.

Thank you very much.

Mr. FOX. Thank you, sir.

The CHAIRMAN. Mr. Fox, at the February 20, 1987 hearing on this measure, Dr. Tom King, member of the National Council of Historic Preservation, estimated that 300,000 skeletal remains of Native American Indians are held in museums and similar institutions nationwide. Is this a good estimate?

Mr. FOX. Mr. Chairman, that is a very difficult question to answer for the same reason that I responded in the manner that I did with Senator Melcher on another question. I don't think that we have yet come to that sophistication within our profession to be able to instantaneously provide such documentation as to numbers of such specimen. I would like to believe that soon we will be to that point.

It's just impossible for me today to tell you that that is or is not an accurate estimate.

The CHAIRMAN. You are speaking in behalf of the American Association of Museums, aren't you?

Mr. FOX. That is correct.

The CHAIRMAN. And these museums have no inventory as to what they have in their collections?

Mr. FOX. Oh, indeed, we have inventories independently, but I'm saying in terms of our ability to assemble such information. I would be happy to see that we make that effort on behalf of the American Association Museums to provide some estimates of the numbers of specimens in our collections nationwide. But at this moment we do not have such a figure to provide you today.

The CHAIRMAN. Can you make a report on that and submit it to the committee?

Mr. FOX. We'd be happy to make the effort.

[Material to be supplied may be found in Mr. Fox's prepared statement which appears in appendix.]

The CHAIRMAN. Will 300,000 be too large a number or too small a number? Your museum——

Mr. FOX. I'm just not in a position, sir—our museum doesn't have one skeletal remains.

The CHAIRMAN. Mr. Anderson, would that number be a correct one?

Mr. ANDERSON. I don't know, either, Mr. Chairman.

The CHAIRMAN. Ms. Munson?

Ms. MUNSON. This is going to sound very redundant. I don't know because I have no way to know. There is such a variety of museums throughout the country as well as other institutions that hold collections of artifacts and also of human skeletal remains that no one has ever put together a complete tabulation that would represent accurately the information you want.

The CHAIRMAN. The Smithsonian has 18,500 continental Indians plus Aleuts?

Mr. ANDERSON. Including Aleuts.

The CHAIRMAN. Eighteen thousand five hundred. That represents 56 percent of your collection and, of the remaining 44, one-half of that would be Caucasian and African?

Mr. ANDERSON. Yes, sir.

The CHAIRMAN. Today the Indian population is 1.4 million and we maintain a collection at the Smithsonian in excess of 18,500. Our white and black population is in excess of 240 million and we have roughly 8,000; is that correct?

Mr. ANDERSON. Yes, sir.

The CHAIRMAN. Don't you think we should increase our black and white collection?

Mr. ANDERSON. We're attempting to, Mr. Chairman. [Laughter.]

The CHAIRMAN. If you are going to have numbers of skeletal remains in proportion to the Indian remains that are in your possession, what number would that be in relative terms?

Mr. ANDERSON. It would depend, sir, on the baseline that you want to collect. One of the benefits of being able to do research now in physical anthropology is that more and more you can work with skeletal remains for which there are known medical records from when the individual was alive, and you can begin to see the effects of a disease in infancy or a particular kind of dietary regimen in the skeleton itself after death, which allows you, then, more and more penetrating insights with regard to skeletons from earlier times, being able to make inferential judgments about what must have been the case then.

The CHAIRMAN. I have been advised that the bulk of your Indian skeletal collection, which is over 90 percent, was acquired before the turn of the century; is that correct?

Mr. ANDERSON. I believe it is, sir.

The CHAIRMAN. Since that time, how many of these remains have undergone study?

Mr. ANDERSON. I do not know.

The CHAIRMAN. I have been told that over 90 percent of the collection has remained in boxes throughout this period. No attempt has been made to make any studies on them; is that correct?

Mr. ANDERSON. I do not think so, sir.

The CHAIRMAN. Then what would you say has been done with these remains?

Mr. ANDERSON. Well, the analogy with the reference library comes again to mind. Any number of documents are pertinent to particular research questions, perhaps not to others. When a question comes along, you need the document in question to turn to at that point. It may not be something that you rely upon on a daily basis.

The CHAIRMAN. Is it necessary for the Smithsonian to maintain in its collection all of the skeletal remains that were gathered at the battle of Little Big Horn?

Mr. ANDERSON. I'm not apprised, sir, of remains that we may have from that battle.

The CHAIRMAN. Do you need all of them?

Mr. ANDERSON. I'm not aware that we have remains, perhaps we do; I do not know.

The CHAIRMAN. I have been told that you have several hundred from that battle. Will you provide this committee with accurate statistics? We have been told that approximately 3,000 have been identified by tribal affiliation; is that correct?

Mr. ANDERSON. I do not believe so, sir.

The CHAIRMAN. We have been also advised that approximately 700 have been identified by name, precise names?

Mr. ANDERSON. No, sir; there are 14 who have been identified by precise name.

The CHAIRMAN. What about 3,000 by tribal affiliation; is that wrong?

Mr. ANDERSON. I believe the figure, sir, is 620, but in view of this kind of confusion, I would be grateful to you if we could supply a definitive set of statistics for the record for the benefit of this committee.

[Material to be supplied follows:]

The Smithsonian collection contains only one specimen from the Battle of the Little Big Horn, the skull of a white soldier which was sent to the Army Medical Museum for preservation and study.

Specimens in the Smithsonian collection that have documentation identifying them tribally total 620, not 3,000. Of the 620, 14 can be identified by name.

The **Chairman**. How are you identifying these? Can you identify them as from a particular region?

Mr. **Anderson**. The catalog data varies. Materials that came from the Army Medical Museum came complete with records, many of which on review now indicate error. Individual skeletal remains that are supposed to be male by record instead turn out on review of the specimen itself to have been female, for example. There are other instances where the remains in question were indicated to be Native American, but the dental work would indicate that was highly unlikely to have been the case, for example.

The **Chairman**. We have been advised that approximately 5,000 in your collection came from the Army; is that correct?

Mr. **Anderson**. I think about 4,200.

The **Chairman**. About 4,200. Thank you very much.

Ms. Munson.

STATEMENT OF CHERYL ANN MUNSON, CHAIRMAN, GOVERNMENT AFFAIRS, SOCIETY FOR AMERICAN ARCHAEOLOGY, WASHINGTON, DC

Ms. **Munson**. Yes, sir, Mr. Chairman.

The Society for American Archaeology is an international association comprised of professional and avocational archaeologists concerned about the discovery, interpretation, and protection of the archaeological heritage of America. The society and its members have a longstanding relationship with many Federal and State agencies, Native American tribes, and museums on our common goals. These are to preserve, study, and promote the Nation's cultural past for present and future generations.

We appreciate the opportunity to testify today on the proposed Native American Claims Commission Act. Archaeology's contribution to the understanding of prehistory and history of America is both unique and indispensable. It ranges from research about the peopling of the American continent over 12,000 years ago, to studies of development of Native American cultures, such as those responsible for the cliff dwellings at Mesa Verde and the mounds of the Ohio River Valley, to investigations that reveal pre- and post-civil war life ways of plantation owners, farmers, slaves, and free men in the South.

An accurate interpretation of the past depends on both archaeological resources and written records. Much of the heritage of this country, certainly its prehistory and very early history, is represented only by archaeological remains.

The tangible remains of past cultures include artifacts, plant and animal residues, structural features, and human remains. From the remains of every-day living and the dating of archaeological sites, past cultures are reconstructed and sequences of social, political, and economic development are brought to light.

Archaeological research provides a voice for peoples and their cultures who would otherwise be silent, yet whose stories enrich our understanding of humanity. Archaeology talks about those peoples who were here before written history or were not interesting to those people writing early accounts.

The study of human remains is an integral part of knowledge about many aspects of the past, and these cannot be derived from other sources of information. For example, studies of age, sex, injuries, and physical attributes of human remains tell us about customs and values of past societies in ways that we simply cannot know about by studying artifacts or structures.

Also, studies of genetic markers in the human skeleton permit the reconstruction of marriage systems, of migrations across the landscape, and of biological relationships among now extinct cultures. With this information, past cultures are something more than unlinked depictions of equipment and buildings. They come alive to us and they tell us something more about human prehistory, more than just material.

Analyses of human bone tissue allow very important studies. These have to do with dietary elements and the relationship of these elements to the health, economics, and social organization of past populations.

Last but not least, the study of ancient human remains provides significant information about the epidemiology of diseases and modern health conditions. I would like to mention two particular disease studies that I find very interesting. One has to do with the origin of rheumatoid arthritis, and the second has to do with the effects of tuberculosis on the native American population. Finally, studies of human bone tissue allow scientists to look at pollutants, both pollutants in today's environment and pollutants in past environments, and how these affected populations. Studies of mercury and lead are two examples of such kinds of studies.

Many of the significant contributions to archaeology and human biology derive from the application of new chemical and physical techniques. This field of inquiry is rapidly developing and innovative methods are being used in restudies of existing collections both to reach new conclusions and to alter previous interpretations.

The scientific value of human remains—both for the present and for the future—resides in the careful care and curation of museum collections. These must pertain to all periods of time and represent all races and wide geographic areas.

For these reasons, the society opposes a universal prescription for automatic reinterment of human remains.

Because the scientific excavation, curation, and study of human remains is so important, archaeologists and museums throughout the world share these responsibilities. Without museum collections in this country, scientific studies could not have shattered the racist myth of the Mound Builders, for example—the false notion that the ancient mounds of the Ohio River Valley and elsewhere were the result of some superhuman race rather than a long sequence of constructions by various ancient Native American cultures.

Without museum collections and studies, archaeologists could not enlighten people about the rich and varied cultural expressions of Native American culture found throughout this continent. For example, the proto-urban centers at Chaco Canyon, New Mexico, and the large, center at Cahokia in East St. Louis, Illinois and St. Louis, Missouri. Other examples include, of course, the prehistoric art of the Northwest Coast and the ancient irrigation systems of southern Arizona.

Over the past several decades the society has sought to clarify values and principles inherent in the scholarly study of human remains. This is reflected in numerous meetings of the society's leaders with representatives of pan-Indian and Indian organizations. One important result of meetings and conferences has been reiteration of the range of scholarly, political, cultural, and human issues that are involved. A copy of the statement of issues was appended to our written testimony.

Sensitivity to the concerns of Native Americans has grown and real dialogs have developed about what is appropriate for studies, for collections, and museum displays. The society believes that disputes about the treatment of human remains are best resolved at the local level, on a case-by-case basis.

This mechanism assures that appropriate parties are identified and consulted, and it honors the diversity of interests and concerns to a degree simply not possible under a national policy. This provides balance between legal issues and the legitimate concerns of scientists and the living peoples who have a clear relationship to human remains.

Archaeologists know that not all human remains are worthy of study and curation. Some have no scientific value. In these cases reburial can be acceptable. In other cases direct lineal relationships between living peoples and human remains clearly override scholarly concerns. Thus, the wishes of the descendants take precedence over the potential for long-term scientific study.

From my own personal experience, I would mention one example. That is the excavation, study, and reburial of human remains from an historic Nez Perce Indian cemetery in the State of Washington. This cemetery was known and was to be inundated by a Corps of Engineers reservoir. Archaeologists and the Nez Perce worked very carefully together.

In situations where human remains cannot be directly linked to living individuals or groups, such as is the case with very ancient human remains, scholarly values should have precedence. To rebury such remains after a single period of study precludes future analyses and presumes that scientists are somehow omnipotent, that the significance of the remains could be learned by current methods alone, and that no new questions will arise about the past culture or the genetic relationship of their bearers.

In reality, when human remains are reburied after a one-time period of study, the loss of knowledge is mitigated only to a very small degree. A photograph or a cast, after all, cannot truly take the place of the original materials for precise measurements and observations.

The society recognizes the scientific and traditional Native American interest in human remains, but the proposed legislation assumes that there is an adversarial relationship between archaeologists, museum specialists, and Native Americans. Very simply, this is not the case. Archaeologists throughout the country deal daily with Native Americans successfully on this very issue.

The question arises: do we need a new Federal authority to take care of an issue that is being managed at State and local levels?

Indeed, the society believes there are more pressing concerns that are shared by archaeologists, museums, and Native American peoples, and these truly deserve the committee's attention.

These are, first of all, support for Native American and tribal museums. They should be greatly enhanced and, additionally, there should be training in museum work for Native peoples.

Second, better enforcement is needed of existing legislation such as the American Indian Religious Freedom Act and the Archaeological Resources Protection Act. This is needed to halt damage to sacred places and to stem the rampant looting of archeological sites which is occurring all across the country. Looting, in fact, focuses on prehistoric Indian cemeteries where people dig through skeletons simply to collect grave goods.

Finally, more educational programs are needed to increase the public's knowledge and respect for the many thousands of years of Native American cultural development and achievement. Knowledge is represented by archaeological site investigations and museum collections. We would be pleased to work to bring accurate information to the public.

The society appreciates the diversity of belief about human remains and how they should be treated. When recovered or curated, they should be accessible only for responsible scholarly or educational purposes. Commercial exploitation of ancient human remains and grave goods is abhorrent.

The proper disposition of human remains should attend to scholarly concerns and the wishes of the living who have a demonstrated relationship to the remains. If conflicting claims arise, resolutions are being achieved at the local level by consideration of traditional values, scholarly values, and the links between peoples of today and those of the past.

Thank you.

[Prepared statement of Ms. Munson appears in appendix.]

The CHAIRMAN. Thank you very much, Ms. Munson.

Mr. Anderson, of the 18,500 American Indian skeletal remains in your custody, what number would be 200 years or older?

Mr. ANDERSON. A figure of about 4,100 represents our best guess at the moment of those remains of individuals who lived since 1492, Christopher Columbus' voyage. From the last 200 years, I don't have an estimate with me, but we can certainly make that part of the statistical report that we provide the committee.

[Material to be supplied follows:]

Most of the Smithsonian collection is not recent. It is estimated, however, that approximately 1,000 specimens from the contiguous states may be less than 200 years old. Thus, of the more than 18,000 Native North American skeletal remains in the collection, some 17,000 are from the prehistoric period.

The CHAIRMAN. Isn't it correct that the bulk of your collection is made up of remains of rather recent surviving Indians in the last 200 years?

Mr. ANDERSON. No, sir, quite the contrary. The bulk is prior to European contact.

The CHAIRMAN. Of the 5,000 collected by the army, what percentage would be prior to European contact?

Mr. ANDERSON. A substantial percentage, sir, but I'm not aware of the number at the moment. The Army Medical Museum was the initial repository, not the Smithsonian, of what at the time were archaeological dig results.

The CHAIRMAN. I am certain every member of this committee fully concurs with the value of archaeologists and anthropologists and human biologists. We are also fully in concurrence with the importance of knowing how we lived a thousand years ago or a million years ago, whatever it may be. But how many do we need to conduct these studies?

Mr. ANDERSON. Many of the studies themselves, of course, are based on large sampling because the study structure requires sampling and the use of probability and statistics with regard to drawing conclusions from the data that is available.

The CHAIRMAN. Of the 30,000—of the 18,500 remains of Native Americans, how many have scientific value—just an estimate?

Mr. ANDERSON. It's a broad question, Senator. From some point of view, surely, all of them would have some scientific value. Many of them perhaps would have lesser scientific value than others. Clearly, remains that are the best documented have the most value. Remains that are the most speculative are those where the century in which the individual was alive is in question, as may be the geographical area that the person lived in prior to death. If you have the least amount of information, the specimen is of least value.

The CHAIRMAN. On your personnel list today, how many archaeologists do you have dealing with Indians?

Mr. ANDERSON. A number, sir? I would hesitate to name a specific number off the top of my head. It is the largest single concentration in our department of anthropology at the Smithsonian and has been since the last century. I would imagine the number is in double digits.

The CHAIRMAN. Just archaeologists and anthropologists?

Mr. ANDERSON. That's correct, and collection management specialists, yes, sir.

The CHAIRMAN. They are all dealing with the 18,000 remains every day?

Mr. ANDERSON. Some of them are physical anthropologists, some of them are cultural anthropologists. Of the physical anthropologists, their work, indeed, is on the remains that we have and those that we can borrow from elsewhere.

The CHAIRMAN. I suppose under your ration every skeletal remain has some scientific value?

Mr. ANDERSON. Yes, sir.

The CHAIRMAN. So under that rationale, you are not prepared to give up even one?

Mr. ANDERSON. No, sir; where the individual can be identified and where descendants or tribes come forward and request the remains, we are, as I said before, honor and duty-bound to repatriate those remains.

The CHAIRMAN. And within 1 year you will be returning a total of 21?

Mr. ANDERSON. That's correct.

The CHAIRMAN. How many do you intend to return in the next 10 years?

Mr. **Anderson**. It depends, Senator, on the state of the research in question. It would not serve anyone well if the wrong remains were returned to the wrong parties.

The **Chairman**. So you will insist that the repatriation or return be directly to a descendant?

Mr. **Anderson**. In the first instance, if the remains are of a known person and that's demonstrable by the matching of records and the remains themselves, the first priority would be to find a living descendant and seek his or her views and wishes on the matter.

Should there be no living descendant that can be identified or located, the wishes of the respective tribe would be solicited and similarly respected.

The **Chairman**. How many searches have you made of living descendants?

Mr. **Anderson**. Of the 14 individuals that I mentioned earlier whose remains we have—individuals who are named and whose bodily remains match up with the records—letters have gone to each of those tribes requesting their assistance in finding direct descendants.

The **Chairman**. There are only 14 of those in the whole collection of 18,500?

Mr. **Anderson**. Where it is conclusive that this is the bodily remains of a named individual, yes, sir. Additional research may well, indeed——

The **Chairman**. How many can you identify by tribe? How many of these skeletal remains can you say is Navajo, Shoshone, or Sioux?

Mr. **Anderson**. On the basis of the written record, approximately 620. On the basis of other skeletal——

The **Chairman**. How do you identify the rest?

Mr. **Anderson**. On the basis not of the written record, sir, but on the basis of the mute testimony of the bones themselves. Also, with presumption with regard to where the remains were located. But, as Secretary Adams testified last year, it is a matter of speculation at best in many instances to presume that a set of remains located in, say one of the plains States, for example, is identifiable conclusively as coming from one or another of the many tribes who over the course of time populated the area in question.

The **Chairman**. Well, apparently we have got a few problems before us, haven't we?

Mr. **Anderson**. Yes, sir.

Mr. **Fox**. Mr. Chairman, may I make one additional comment?

The **Chairman**. Certainly.

Mr. **Fox**. Since we are concerned, indeed, with the numbers of human remains that appear in museums today, I would hope the committee understands the fact that on certain occasions those remains are there at the choice of the tribal authorities themselves. We have such examples in the Southwest.

The **Chairman**. Oh, I am certain, but you take the Smithsonian, how many of them are there at the request of the tribes?

Mr. **Anderson**. There are instances where tribal leaders——

The CHAIRMAN. Instances? How many? Of the 18,500, how many are there because the Shoshones or the Cheyenne or the Navajos wanted them in your collection?

Mr. ANDERSON. I have it only by hearsay, Senator, and in a meeting in preparation for this hearing just two days ago, that there are instances where tribal leaders have willingly and enthusiastically endorsed our retention of remains for continuing study.

The CHAIRMAN. Oh, I am certain, but how many? What number does this represent?

Mr. ANDERSON. I'd be happy to supply that for the record.

[Material to be supplied follows:]

Several tribes have asked that the Smithsonian Institute retain ethnographic material for preservation and safe-keeping. However, none have done the same with respect to skeletal remains.

The CHAIRMAN. Ten?

Mr. ANDERSON. I do not know, Senator.

The CHAIRMAN. On something this spectacular, you don't have any numbers?

Mr. ANDERSON. Well, you see, Senator, we've heard only from 13 tribes, 6 other related organizations, since our letter went out in 1985 to the 225 federally-recognized tribes. It may be that many of those who have not responded feel strongly that we ought not continue to hold remains; we don't know. It may be that those who have not responded feel that our continued retention of these materials is acceptable.

The CHAIRMAN. Well, I didn't want the record to show that most of your collection is made up of remains that are held because the tribes wanted them there?

Mr. ANDERSON. No, sir; I would not want that——

The CHAIRMAN. If anything, that would be the exception to the rule. As far as our communication is concerned, I have yet to hear from any tribe that says we want remains left there.

So will you tell us—and, Mr. Fox—how many in your collection are there because the tribes wanted it there?

Mr. FOX. We have not one skeletal remains, so I'm not referring to the Heard Museum in the example that——

The CHAIRMAN. What example are you giving us?

Mr. FOX. We have the Arizona State Museum in Tucson which, of course, is State funded.

The CHAIRMAN. How many remains are there because the tribes want them there?

Mr. FOX. A significant portion of those remains. I do not know numbers, but I know tribal affiliation and the fact that since 1930——

The CHAIRMAN. But they are there because the——

Mr. FOX. It's the option of the tribe.

The CHAIRMAN [continuing]. Because the tribes wanted it there?

Mr. FOX. At the option of the tribe.

The CHAIRMAN. Now if the tribe then wants it, what do you do?

Mr. FOX. Then they would return them to the tribe at their request. That's that partnership that I spoke of earlier where there is this option to work——

The CHAIRMAN. Do you think that should be the process—if the tribes wanted it, that they should get it back?

Mr. FOX. That certainly is what our American Association of Museums recommended.

The CHAIRMAN. When you return these skeletal remains, do they have to be identified precisely by name and descendant?

Mr. FOX. Allow me just to cite briefly the statement about this subject in our policy. "Unless there are compelling and overriding reasons to retain human remains under these conditions, museums should work with legitimate native American descendants to return such remains."

That pertains to the remains of——

The CHAIRMAN. Then you have to be a descendant, not a tribe?

Mr. FOX. We say, "Upon receiving a request for the return of human remains from the pre-European contact era over which there exists a direct descendence specifically to American individuals, families, or tribes, museums have a responsibility to weight equally scientific values with Native American culture values and basic human dignity. Unless there are compelling and overriding reasons to retain human remains under these conditions, museums should work with legitimate Native American descendants to return such remains." That's our policy.

The CHAIRMAN. Descendants?

Mr. FOX. Excuse me, sir.

The CHAIRMAN. So if the Navajos ask for it and they cannot point directly to a descendant, you don't discuss this matter with them?

Mr. FOX. No; I don't believe that, sir, is the spirit of the policy. The spirit is open communication, develop options, and work to the request or the particular issue. That is how most museums around the country are showing a commitment these days to deal with this kind of——

The CHAIRMAN. So we present the Native American Indian with an impossible situation?

Mr. FOX. An impossible situation?

The CHAIRMAN. Yes.

Mr. FOX. Could you——

The CHAIRMAN. The skeletal remains collected by amateur anthropologists in the U.S. Army, remains numbering 5,000, but we have no idea which tribes they belong to.

So under your generous proposal, nothing goes back.

Mr. FOX. Again, I do not believe that is the intention of our policy. We want, indeed in all cases, to consider the request of repatriation in good faith and seriously and in a cooperative manner. That is how the policy is stated in the last paragraph.

"The remains of both pre- and post-European contact eras that lack such direct connections to existing individuals, families, or tribes, Native Americans who request repatriation must demonstrate that there exists compelling religious or cultural values that transcend well-established, scientific interests on the part of museums in order for repatriation to occur. Museums should consider such requests of repatriation seriously and in good faith."

The CHAIRMAN. From a descendant?

Mr. FOX. Excuse me, sir?

The CHAIRMAN. From a descendant?

Mr. FOX. No; that is where there is not a descendant that we say in good faith that we'll work with them.

The CHAIRMAN. Senator Melcher.

Senator MELCHER. Well, I can accept Mr. Fox' testimony on behalf of Heard and on behalf of the Arizona State Museum at Tucson that if there is a claim by the tribe or pueblo or family or village, the remains will be probably returned. But I'm a little bit disturbed by testimony of Ms. Munson that says that it ought to be decided on a local basis. I don't know how local the decisions of the Smithsonian are in the case of the tribes or groups.

Mr. Anderson, the State of Alaska by action of their legislature cited the number of remains of Native Americans from Alaska, some 4,000 that are in the Smithsonian's collection, and asked for them to be returned. They were not, were they?

Mr. ANDERSON. No, sir; we are engaged in continuing correspondence with officials in Alaska.

Senator MELCHER. Which might go on and on. You know, here's a representative body of the State making the request. I don't know how this fits into resolving it locally, first of all. A request is sent from Alaska to Washington, DC and nothing's done.

I just think that the testimony of all three of you on what should be done with the remains defies logic. Mr. Fox says that Heard and Arizona State Museum at Tucson are going to return skeletal remains if they're requested by the tribes or the pueblos. Yet, even Mr. Fox' testimony is reluctance to set a legal procedure of how these could be arbitrated when there's no action.

It's obvious there has to be a legal procedure. Even the State entering in on behalf of native Americans' remains from Alaska is told, "Well, we'll discuss it" and nothing is done.

So much for the bones aspect of this. I think it's repugnant to all Americans to think that we would tolerate the return museums refusal to skeletal remains to families or tribes when requested. I think your testimony demonstrates that we'd better have a legal procedure.

Let me go to a sacred ceremonial artifact or object. Mr. Adams testified over a year ago, Secretary Adams, that is on behalf of the Smithsonian regarding the Northern Cheyenne request for the return of their pipe (a ceremonial object) that belongs to the Dog Soldier group of the Northern Cheyenne. A Cheyenne named Tallbull was killed in 1868 and the pipe was then removed which was in his possession as a ceremonial object. It was taken by the soldiers and eventually ended up at the Smithsonian. Mr. Adams agreed a little over a year ago that that ceremonial pipe should be returned to the Northern Cheyenne. Nothing has happened.

The Smithsonian has indicated that there's testimony of numerous Northern Cheyennes, including the wife of Tallbull who was killed in 1868 in a conflict with the army, that despite her testimony, or affidavit that's on record, that, yes, indeed, her husband, deceased, killed in battle, was a member of the Dog Soldier group of the Northern Cheyenne and that this was a pipe they used for ceremonial purposes, et cetera. A descendant of Tallbull, yet alive, 75 years of age, who in the Dog Soldier tradition of the Northern

Cheyenne is the custodian of the pipe, if indeed they would ever get the pipe back, may die well before the pipe is returned.

The current request now before the Smithsonian is that that pipe be returned for ceremonial purposes on August 3rd of this year, and yet there is no action by the Smithsonian. So much for negotiations.

This is obviously a case where we need a procedure to force the return of property used for ceremonial purposes to the tribe and to the correct person named by the tribe.

Now, Mr. Anderson, there's no amount of testimony that the Smithsonian could conjure and inundate this committee with and circulate among the museums of the United States and abroad that could demonstrate that you've acted in good faith. The Smithsonian is viewed by Native Americans and all of the rest of us that are Americans, and probably internationally, as some sort of an institution of the United States Government. The status of the Smithsonian is certainly quasi-government. You do have a charter. You're supposed to represent Americans in the actions that you take.

I fail to understand how Dr. Adams' testimony before this committee over a year ago that this ceremonial object would be returned to the Northern Cheyenne has not been accomplished by this time and in the face of an urgent request that, indeed, it be returned by August 3rd for ceremonial purposes of the tribe. Might I note that while Bill Tallbull, now 75, is still alive so he can participate in the ceremonies that the tribe has every summer where this pipe is an important object.

Mr. ANDERSON. May I comment, Senator?

Senator MELCHER. Well, I'd be glad if you would.

Mr. ANDERSON. May I assume that you have seen the correspondence we have had with Mr. Bill Tallbull, including the enclosure of an 8-page research summary of the study that was done subsequent to Mr. Adams' testimony concerning the pipe?

If you have, I believe the last sentence in our letter to Mr. Tallbull represents a defensible and, in fact, prudent and obligatory position on the part of the Smithsonian, and I quote:

"We are eager to resolve this matter and look forward to receiving additional information from you." In short, our research indicated that there were many ambiguities about this pipe. Was it supposed to have a red bowl, was it supposed to have black bowl? Did it conform with illustrations of Mr. Tallbull's ancestor that were published when he was alive? Is its shape appropriate to the shape of pipes used by the Dog Soldier Society?

If it is conclusive that that is the pipe and it is, in fact, the ceremonial object required by the Dog Soldier Society for its religious and other ceremonial activities, the pipe will, of course, be returned. Until that time, it would not be prudent for us who maintain collections on behalf of all citizens to return an object to one citizen.

Senator MELCHER. There's no question in my mind that, faced with all the evidence that the tribe can provide, including the direct descendant of Tallbull, on the authenticity of the ceremonial pipe that any court would have to rule in favor of the tribe.

The arbitrary decision by the Smithsonian that the demonstrated evidence is not conclusive is the best argument that I know of for a legal procedure to resolve these issues. Bill Tallbull at 75 years of age, having long sought the return of the pipe, is not physically capable of enduring a long, protracted legal case to get the return of the pipe. I think this is obviously sufficient evidence that procedures that the Smithsonian practices are not adequate and it does not recognize the property rights for ceremonial purposes of the tribe for a sacred object.

Might I also point out that the tribe volunteered to only have the pipe for a few days to use it on August 3rd with the responsibility entrusted to the Montana Historical Society to assure the return of the pipe after it's used for ceremonial purposes.

I don't believe, Mr. Anderson, that in this case the actions of the Smithsonian can be viewed in any other light than a firm affirmation that a bill is needed to establish a method of arbitration so that these things can be resolved.

The **Chairman**. Thank you very much. It is extremely helpful.

Mr. **Anderson**. Mr. Chairman, Senator Melcher, thank you.

The **Chairman**. We now have the second panel consisting of Mr. Bill Parker, spokesperson of the Northern Cheyenne Tribe of Lame Deer, Montana; Professor Oren Lyons, of the University of New York at Buffalo and Faithkeeper of the Onondaga Nation, Haudenosaunse, and he will be accompanied by Chief Vincent Johnson of the Onondaga Tribe of Nedrow, New York. We also have Mr. Russ Hartman, curator of the Navajo Nation Museum of New Mexico.

Gentlemen, welcome. Our first witness will be Mr. Bill Parker.

STATEMENT OF WILLIAM PARKER, SPOKESPERSON, NORTHERN CHEYENNE TRIBE, LAME DEER, MT

Mr. **Parker**. Mr. Chairman, you have in your possession my credentials from the Northern Cheyenne Tribal Government and the honor that was conferred on me by the Dog Soldiers Society of being here to represent them as well.

I would like to preface my remarks with just a short statement.

My name is William Parker. I am here today at the request of Bill Tallbull, Northern Cheyenne Cultural Commission, and Robert Bailey, chairman of the Northern Cheyenne Tribe at Lame Deer, Montana. I am a tribal member. My great grandmother was a survivor of the Sand Creek Massacre. My great grandfather was William Rowland, whom Marquis called "the last of the Great River trappers.", Came here on several occasions to represent the interests of the Northern Cheyenne during the latter 1800's.

I also bring you greetings from the Hereditary Chiefs of the Dog Soldier Society.

Quoting the gospel of John in the New Testament, "Greater love hath no man than he would give up his life for his friend." * * * I would describe for you briefly the ultimate role of the Dog Soldiers so that the proper perspective may be gained for what we are about to teach this morning.

In paraphrase of Joe Tallbull's explanation to me of the battle at Summit Springs in regard to his ancestor.

> Tallbull gave his infant girl child over to his wife and told her to leave * * * to take the captive German woman and escape. * * * She begged him to go with her. He stepped down off his horse and shot it in the head and turned to face the enemy. That was the last she saw of him.

When the tribe was threatened, the Dog Soldier who always went first would go forward and tie himself to a lance or a picket pin by a length of rawhide rope and fight until he died so that his family and his tribe could gain time to survive.

The badge of courage, if you will, was the length of rawhide which he kept diagonally across his chest to always remind him of his great ultimate responsibility to the tribe.

I'm sorry, this is always hard. Maybe that's why it's so hard to talk to archeologists and anthropologists about these things.

For 111 years now the Northern Cheyenne have service in the Armed Forces of the United States, always with that symbol of courage and trust in mind.

I am especially pleased to be before your committee this morning, Senator Inouye, for most certainly only a Nesei of the Samurai tradition embodied in the fighting spirit of the 442nd Regimental Combat Team can fully understand what we are about to impart, sir.

In a letter to the Honorable Senator John Melcher in response to a letter that we received from the Smithsonian, the subject of which is discussed in previous testimony, I will read these parts.

We have fuller testimony prepared for the record, sir. We have letters of documentation, and so forth, which have been submitted.

I will read this and I think it will get to the gist of where we are at this point in time. It's written in deference to Senator Melcher from our home State of Montana.

> This letter is prepared to be part of the record in respect to testimony on Senate 187.
>
> In prior testimony on or about February 19, 1987, as examples of items of a religious or sacred nature which were in the possession of museums or collections we told of a strap used in conjunction with the Sacred Arrows covenant as a means of keeping count of the number of times"—and it says "sacred grass"; it should be "sweet grass"—"is burnt. This item was at the Buffalo Bill Museum at Cody, Wyoming. It has since been returned.
>
> The second item was a pipe belonging to the Dog Soldiers' Chief Bundle which was taken from Chief Tallbull during the battle of Summit Springs, Colorado, 1869. That item now reposes in the Smithsonian Institution, Washington, D.C.
>
> It is my understanding that at that time the Smithsonian Secretary, Mc Robert Adams, stated that the pipe would be returned.
>
> The Smithsonian then withdrew that offer and apparently have chosen that item to be of central focus of their objections to S. 187.
>
> In an official response to tribal requests to return the pipe even through intermediaries for ceremonial purposes the Smithsonian chooses instead to ask for added information relative to the provenance of the item.
>
> This letter to you now as our intermediary due to the political problems which may arise' will in part, answer the last response of the Smithsonian in the matter.
>
> The pipe has a dual ceremonial purpose. It is used for the reseating of the society and otherwise as a means of spiritual conveyance of the tribe while on a journey. It is smoked four times during a journey as a way of seeking protection for the tribe.
>
> It is smoked after the decision to go is made and from that time on no member of the society is to look backward from where they came. The pipe is smoked two times en route and for the last time when the destination is reached.
>
> The third smoke had just been concluded when the troops of General Carr attacked.
>
> The decision to go north from Oklahoma had been made. There was no turning back. Little Wolf had signed the treaty of Ft. Laramie, 1868. Terms of that treaty were uncertain to that part of the Cheyenne Tribe which had gone south after the Fetterman Battle near Ft. Phil Kearney in which the Dog Soldiers had participated.

It was Tallbull's band that had gone south.

About 1830, the tribe had split into two bands to facilitate travel and the feeding of the people and assure that if anything overcame the tribe one part would survive. From that time forward there was constant travel between the two bands. Proof of this is found in the aftermath of the Sand Creek Massacre where many Northerns were found to be present.

While the Dog Soldiers were not a party to the treaty, it was felt that they should go north to see Little Wolf who was of the Elk Horn Scrapers and learn the terms of the treaty. They had heard that some respite might be gained in the treaty area.

For them, however, a state of war still existed.

It should be known that there never was two Dog Soldier factions—always and ever there has only been one—always and ever will there only be one. Tallbull was the keeper of the Bundle for the Dog Soldiers.

Tallbull would have had no other in pipe in his possession except for that pipe.

Tallbull's wife in the provenances provided states that the pipe was his.

The only conjecture evident on balance is the Smithsonian's conjecture. The only ambiguity evident is the Smithsonian's ambiguity.

The only people qualified to make decisions in regard to the pipe are the hereditary Dog Soldier Chiefs.

Ceremonies can be carried on without certain items of antiquity if that decision is made to do so. However, those rituals are diminished in impact.

The black bowl question highlights only one point—that the Smithsonian itself could not keep the pipe intact. Tallbull would have been carrying no other pipe. That bowl would have been red as a ceremonial bowl should be. How there came to be a black bowl attached as per the illustration by Colonel Dodge fully 14 years after the battle and 9 years after the Smithsonian's acquisition is truly a mystery, but that mystery was created in whatever manner by the Smithsonian.

That pipe is a communal pipe belonging to the Dog Soldier Society for purposes of spiritual protection of the whole tribe. As the Dog Soldiers were always the first society in line of march and the keeper is always at the head of the Dog Soldiers, that pipe, in essence, serves as the foremost standard as the tribe moves forward.

The Dog Soldiers are concerned that "plunder of war" would be used as a means of not turning the pipe over.

Was the action at Summit Springs a police action as we now know it did or Congress in the fullest sense under Article 1, Section 8, of the United States Constitution actually go on record as declaring war on the Northern Cheyenne Tribe or any other tribe?

Was the United States Government legally responsible for returning all goods confiscated in the course of those many actions during those decades of the so-called "Plains Indian Wars" if said wars were not legally engendered?

We must caution that such declarations in precedent could even affect the return of MIA's of Vietnam and have other far-reaching effects from the world perspective.

The Dog Soldiers have gone on record to cooperate in a manner totally unprecedented; the purpose of which could only expand the knowledge of people everywhere.

Why is the Smithsonian reluctant to pursue that which is the very reason for their existence?

These matters the Dog Soldier Society has asked me to convey to the Smithsonian through your good offices.

The Smithsonian must come to the Northern Cheyenne Reservation to conclude the investigation and witness the ceremony. The invitation has long been extended through the Montana Historical Society. Why has there been no action or appropriate response?

If they come, the pipe could come with them; we could smoke; the ceremony could be recorded; and all could be made well. We do not want controversy.

As ever, William Parker, a messenger for the Dog Soldier Society of the Northern Cheyenne Tribe.

The record continues on with fuller testimony, sir.

With respect to the fact that perhaps, because of all the responses we have to make to the different Government agencies and by comparison of the minuscule amount of funds that we do now have available for such purposes, we are inundated, sometimes day after day, with responses for environmental impact statement.

We roamed from the Black Hills in the latter days clear down to Oklahoma and from the Rocky Mountain front over to the Missouri

River. We have burial grounds; battle sites; massacre sites and ceremonial sites all over the area.

It's an unwarranted expense on investors to development projects, let alone to federaly funded archaeologists and anthropologists—the fact that under NEPA we can stop or delay these projects. There has to be a broader-range consideration of how the tribes can get early input into broad-range cultural considerations without having to deal with perhaps two dozen agencies before we can respond. We cannot possibly do it. We do not have the means to respond early on in the process.

I think not only is this bill good, as does my tribe, but the concept ought to be expanded to include other areas in which we are forced to respond.

Silence is our best defense until the 11th hour, and then we can destroy millions of dollars worth of investment. We don't want to do that.

Why is silence our best defense? Bear Butte, near Sturges, South Dakota, which is where our sacred covenants come from is the best example. We revere that place. We go there for spiritual renewal.

To the white man it was just a geological anomaly. The only reason non-Indians would go up there was to look around the countryside and, once they got up there, they found so many rattlesnakes that they'd soon come down fast. No gold was to be found.

But we go up there to spiritually fast, sustain and heal ourselves and gain courage from our Higher Power, "Ma Heo," as we call him.

When the State of South Dakota found out, oh, my goodness, yes, this is, indeed, something of high interest, then they proceeded to gain the land and build a visitors' center there admittedly it is quite tasteful. Still they deny us access across State land to some land which we bought which we use for ceremonial purposes.

We were there in ceremony about three weeks back, smoking and talking with the Honorable Representative Ben Campbell and members of the Forest Service, et cetera. At the same time as these very serious considerations were going on, there was a bunch of college students on tour clamoring up the face of it.

They had crossed our land illegally and they were scattered all over the broad base as we were having this spiritual ceremony there at Bear Butte.

These are the types of things that these people ignorantly proceed to take from us for profit. I would hope at some point in time that the Bear Butte matter could be discussed more fully, but this is why we keep quiet.

There are many, many things we could share, but these bone diggers get out there the minute we share them. They could write a dissertation from probably maybe three paragraphs that I could give them, and soon get a salary of $65,000 a year after they got their Ph.D. Quite clearly, that's our view of these people.

Thank you very much, sir. It's been a great honor.

[Prepared statement of Mr. Parker appears in appendix.]

The **Chairman**. Mr. Parker, I thank you very much. You can be assured that your message has been heard and it will be heard by the members of this committee.

May I now call upon a very distinguished member of the Indian community, Oren Lyons.

STATEMENT OF OREN LYONS, PROFESSOR, UNIVERSITY OF NEW YORK AT BUFFALO AND FAITHKEEPER OF THE ONONDAGA NATION, HAUDENOSAUNSE, ACCOMPANIED BY CHIEF VINCENT JOHNSTON, ONONDAGA TRIBE, NEDREW, NY

Mr. LYONS. Thank you, Senator. May I greet you again in friendship and peace, and on a very important issue.

We prepared a short statement to kind of clarify issues in our minds. Chief Johnston here has just returned from the burial site in Kentucky where Chief Shenandoah and Chief Johnston have been reburied in desecrated graves down there.

Also, Chief Johnston and Chief Shenandoah and myself have been involved in a reburial site in Albany, New York in conjunction with the town and with Government representatives, and so forth. That was carried out in a good way. Chief Johnston will talk about that. I will make this prepared statement.

Mr. Chairman and distinguished committee members, the Onondaga Nation Firekeepers, represented today by Chiefs Vincent Johnston and Oren Lyons, welcome the opportunity to comment on the proposed amendment by Senator Melcher to S. 187.

We agree that the bill should be amended and made into a law that will protect the sovereignty, dignity, and group rights of Native American nations, tribes, societies, and peoples as defined in your amendment.

We are familiar with the arguments brought forth by the Government institutions and agencies, universities and colleges, museums, historical societies and associations, archaeological and anthropological societies and associations, and private collectors and auction houses, all demanding in the name of education, health, science, and sometimes commerce the right cultural treasure, patrimony, and very bones of Native American nations and people.

They state quite clearly without apology that they have rights to our dead over claims that we make on the national behalf. So the question is one of human, religious, legal, and group rights of Native American people versus the interests of the educational and scientific community.

We submit that the legal, moral, ethical, and religious rights and issues to be addressed override the parochial interests presented by the aforementioned groups.

The current collection of Native American human remains in the Smithsonian Institution numbering some 18,000 separate beings is the direct result of a mid-19th century Federal policy that reflected the racist attitude of the times. That is a dismal reality of American history, but what is even more appalling is that today, July 29, 1988, those Native American skeletal remains are still being held against the will of the Native American people. In our opinion, there cannot be scientific and educational reasons enough to override the moral, ethical, and spiritual rights of the indigenous peoples of these lands to these bodies of their ancestors. It should be repugnant to the American public to continue these vestiges of racism in their public institutions.

The board of regents of the Smithsonian Institution is headed by William H. Rehnquist, the Chief Justice of the United States, and George Bush, the Vice President of the United States, with three esteemed Members of the Senate and three esteemed Members of the House, plus nine citizen members.

Are we to assume that the refusal to return Native American bones back to their Mother Earth is the policy of this board of regents? Where we come from leadership is responsible for actions and activities of the organizations they represent. We should be profoundly interested in the board of regents' comments on this subject.

The legal issue of repatriation must be addressed. Repatriation revolves around the status of title. Law favors title. Title is absolute ownership against the world. Native Americans have the law on their side. They have title to their national cultural treasures and cultural patrimony involving the graves and bones of their ancestors. There can be no legal argument against this title. Museums, institutions, and associations cannot hold title to native nations' cultural treasures and patrimony. They simply do not have the weight.

We note that your amendment stresses negotiations prior to the exercise of law. We have gone through this process once successfully, most other times not successfully. One of the primary reasons for our frustration is the qualifying stipulations to the repatriation of sacred objects and artifacts often imposed upon us. If the objects and sacred articles belong to the Native Americans, then the organizations holding them have no right to put any qualifications on their return. Law does not allow the possessor of stolen goods to stipulate conditions of their return.

Mr. Chairman, it is our opinion that the current policy of the Smithsonian Institution and other museums concerning the repatriation of skeletal remains is unreasonable, capricious, and denigrating to the Native Americans.

We believe the policy to be unreasonable and self-serving in demanding that Indian nations supply proof of identification of remains in their possession for as long as 150 years. They side-step the issue of title and obfuscate the principle of ownership by raising conditions that are not relevant to the fact they possess skeletal remains of another race of people.

Mr. Chairman, there is a strong need for the law that you recommend. We need this law now. The need for regulation in this sensitive field is long overdue and we commend your efforts in this direction. Our nations have suffered every hardship that humanity can endure. We have been dispossessed of our land rights, we have been forcibly removed from our homeland, we have been slaughtered in our beds. We have been stripped of our languages and cultures. We have had our children taken away from us and made strangers to us. And still today the very bones of our ancestors are kept from us, many locked away in simple green cardboard containers stacked one upon the other.

We ask again, is this the policy of the Vice President of the United States and the Chief Justice of the Supreme Court? We refuse to be rationalized out of existence by the contrivances of archeological and anthropological organizations, and demand that the rights of the original peoples of this great land be recognized. We are not discussing possession of property; we are discussing the survival of our nations and our heritage of our children, and the souls of our people.

Mr. Chairman, we have just a few specific recommendations to your bill:

Under findings, section 2(d), American public law has not respected our burial grounds.

Under definitions, section 3(d), the definition of a Native Hawaiian should be re-examined with consultation of Native Hawaiians.

Under Native American Museum Claims Commission, section 4(b), we recommend the commission be comprised of at least seven members, four of whom should be Native American. Because of the complexity and vast areas to be served, we think that three members would soon be swamped with problems, making the commission ineffective. Four Native Americans would be a minimum number needed to meet the demands of such a commission and, most importantly, place them in the majority. For too long, Indians have been in the minority when making decisions that directly impact them.

Under resolutions, section 9(a), the Office of Hawaiian Affairs may be too far removed from traditional Kapunas. Claims should be made by the Hawaiian Natives.

In section 17 on the fourth line, "no party" should be changed to "the parties involved" to insure that an outside "party" unrelated to the particular situation cannot suddenly appear to intrude and upset the claims resolution process.

A general comment is that in negotiation the Native American component has the right to establish criteria according to their beliefs and cultural integrity.

That's a short position on the bill. We believe very sincerely, even after listening to the comments that have been made today, that even more so there needs to be action taken in that direction and that we should have a law. The law is long overdue. The process and procedure is long overdue simply by the facts stated here that there are museums who hold Indian bones that no one has any idea about and under no authority, under no law.

So we think that it is time that something should be done by the U.S. Government to protect and recognize our rights.

Thank you, Senator Inouye.

[Prepared statement of Mr. Lyons appears in appendix.]

Mr. LYONS. I would present now Chief Johnston.

The CHAIRMAN. Chief Johnston.

STATEMENT OF VINCENT JOHNSTON, CHIEF, ONONDAGA TRIBE, NEDROW, NY

Mr. JOHNSTON. Mr. Chairman, members of the committee, I thank you for giving us this time to speak.

A few years back we were in Ft. Edwards, New York, working with a Dr. Joel Grossman. At that time they were a sewer treatment plant in and they didn't do their homework. The site up to the treatment plant was listed as an Indian village and Indian burial ground, and the sewer treatment plant was halfway completed when they ran into the burial ground and the village.

So we proceeded to go up and to work with Mr. Grossman. While we were with him, he had two machines that he had borrowed from England. The machines were hooked to a computer. That machine, whether it was—they had a grid that could either be a square or a rectangle. As they put the machine over this grid, it gave a computer readout. It gave a vertical readout and a horizontal readout to let you know where pits were, where the houses were, where the burial grounds were, the conditions of the bodies.

According to Dr. Grossman, he said that with this new type of technology that there is no need to go around digging up all these old Indian villages and Indian burial grounds.

The rest of the anthropologists and archeologist after he made that statement were very angry because they wanted to keep on digging and they want to keep digging up our people.

Members of the Smithsonian were working with Dr. Grossman, and they made duplications of the bones, of the artifacts, of the pottery. When they finished duplication, you could not tell it from the original. You could put both of them on the table right here in front of you, look at them, and they had the same color, the same shape, the same size right down to the millimeter. You could not tell one from the other.

So with this new technology that we have, if they do have to study bones, then why not have someone that is efficient? Why don't they duplicate and give us back all of the human remains because they don't need them?

As Chief Lyons mentioned, we just came back from Kentucky where 10 people paid a farmer $10,000 to go down and start digging in his corn field. They dug approximately 400 holes and dug up about 1,100 or 1,200 Indian graves. They just took the bones and they scattered them all over the place. All the skulls, all the artifacts that were in there have been taken and they are selling them.

We talked to the Governor's office and the first question that they asked was, Why are they putting the Shoshone into Kentucky? So at one time the Shoshone, our territory covered Canada, from the Mississippi to the Atlantic, down through into the Carolinas and all the various Indian nations and tribes were under the wing of the Confederacy. Since there are no longer any Indian tribes in Kentucky, we felt it was the duty of the Confederacy to go back down and reinter the bones that were in there.

Once they understood that it was a problem for the Confederacy, they turned it over to us. But we had to go through the Governor's office, the attorney general's office. We had to go before the House of Representatives and the Senate so that they could pass a new bill into law there to make it a felony now to dig up Indian burial grounds.

The same law was tried to be passed in Indiana, but it was defeated because the Governor himself of Indiana is a pot hunter. So there was no luck in Indiana in getting that law passed making it a felony, but Kentucky did pass it.

It is now a felony to dig a burial ground. I think that there should be a law all over because the Federal law states that it is only on Federal land that it is a crime to dig up Indian burial grounds.

Some of the people that were arrested at that site were on Federal probation for digging on Federal lands, but since this was a private land, even they were on Federal probation, the Federal Government is not doing anything about it because they said that they weren't digging on Federal land; they were digging on State land, and that Federal probation only covers if they had gone back to Federal lands and started digging up the graves, then the Federal Government would do something about it.

It seems to me if they are on probation, why the Federal Government is doing the same thing—why can't the Federal Government prosecute these people because they are doing the same thing on State lands?

It is a problem all over the United States. Throughout the Ohio Valley, you know, there are thousands and thousands of burial grounds there. Through Kentucky, Kentucky used to be a neutral area where all of the various tribes and nations met. There was a hunting ground. So it is very hard to tell whose remains are where because it was a meeting place. It was easy to get to on the Ohio River and all through the whole River Valley there are thousands and thousands of graves there.

The people have been digging it up over the years. They're proud to say that they've got an Indian skull sitting on their mantlepiece at the house even though it is illegal. Down there people think it is okay.

But since this past year when they dug up the 1200 bodies, public opinion has finally started to turn. I think it's going to take a lot of public opinion to change the whole public attitude that just because it's an Indian burial ground it's okay to go and dig them up.

With the Smithsonian saying that—they send out these letters to the various Indian tribal governments saying that we could get back our remains; our nation never received such a letter. As a matter of fact, the whole confederacy, none of them have received any letters saying that they have our remains. I don't know who they sent the letters out to, but they did not send any letters to us.

Thank you. Oh, one other thing: when we were in North Carolina this past spring talking with the Lummis, the Lummis are three tribes that the Federal Government has made into one and now calls them Lummis. If these people are now Lummis where there were three different tribes before, how can these people come back and say that these bones come from my nation when there is no such nation now, because the Federal Government took their identity away from them and said you are now a Lummis. Who is the Federal Government to come up and say that you are no longer who you are and we now make you a Lummis Indian?

There are thousands and thousands of bones throughout the Carolinas that they have asked to be given back to them so they can rebury them, but they say, "Well, you're now a Lummis. If you are a Lummis, how can these bones that are 100 years old or 200 years old be yours when there were no Lummis back then?"

Thank you.

[Prepared statement of Mr. Johnston appears in appendix.]

The **Chairman**. Have you had any contact with the Smithsonian?

Mr. **Lyons**. Yes; we have. We contacted them. We were at a meeting that was held in Santa Fe or a pueblo close to Santa Fe, a Santa Clara Pueblo, where this issue was discussed at that time. At that time the Secretary McAdams said to us that, "Well, if you have sacred objects—if we have your sacred objects, please make a request for them and we'll see that these requests are met."

So this was very good news to us since we knew that there were many of our sacred materials in the Smithsonian Institution. So I immediately went back, carried the message to my people, and we sent a letter making the request. There was no response. I think this was in 1986. There was no response, and time went on, and eventually we had a chance again to chat with Mr. McAdams and I asked him directly, "By the way, we sent a letter and never had a response from it."

"Let me find out about it."

Shortly after he said, "Yes, we found it and somebody's working on it."

Again, a great period of time has gone by and we have not heard again anything from them.

Again, with the involvement of the Smithsonian Institution in the Albany dig, we've had an opportunity to have a peripheral, I would say association with them, nothing direct, nothing in-depth. I felt with Mr. McAdams' position that was presented down in Santa Clara that we were hearing a new position and I was very glad because I knew that they had sacred material from all Indian nations and bones that we're very much concerned with.

But it seems to me that at this point there seems to be a reassessment of that position. Our feeling is that they're digging in and they're going to make a battle out of it. It just comes to our minds, just who are these people to be defying Indian nations? How can organizations have more power and authority than the Indian nation? That's something that's very striking to me.

So I was very glad to hear Senator Melcher say that we need the law. Obviously, there needs to be some kind of direction for our own protection.

The **Chairman**. Thank you very much.

Mr. Hartman.

Mr. **Johnston**. I'd like to——

The **Chairman**. Chief Johnston.

Mr. **Johnston**. I'd like to say one more thing. These 10 men that were arrested, they have not gone to trial yet, but there are other people that have gone out and leased land to do the same thing that these people have been arrested for and are waiting to see the outcome of that trial. If these people get off with a slap on the wrist, these other people have already leased land off of the different farmers where they know there's burial grounds and they're going to go back in there and start digging, and all these artifacts that are taken out, that's where a lot of museums get them from and the private collectors.

It's very tricky because they haven't gone to court. By bringing it up—if nothing happens to these guys, all these other people that have leased the land, they're just going to go back and start digging again.

Of course, the State knows it. The State police are the ones that told me about it, that different people have gone out and leased land already.

The CHAIRMAN. If you can give us the specifics on the case that you are citing now, as chairman of the committee, I will make appropriate inquiries.

[Material to be supplied may be found in Mr. Johnston's prepared statement which appears in appendix.]

The CHAIRMAN. Mr. Hartman.

STATEMENT OF RUSSELL P. HARTMAN, DIRECTOR-CURATOR, NAVAJO TRIBAL MUSEUM, NM

Mr. HARTMAN. Thank you, Chairman Inouye.

On behalf of the Navajo Nation, I would like to thank you and the committee for allowing me to testify today on Senator Melcher's amendment to Senate bill 187.

I've already provided the committee with a copy of my full statement. In the interest of saving time this morning, I would like to simply summarize my testimony.

Museums and other institutions around the world hold vast quantities of Navajo materials, including ceremonial items, numerous archaeological and ethnographic items, and probably some skeletal remains.

It is impossible without doing a very lengthy survey with the cooperation of all of these museums to identify what percentage of those materials would be vital to Navajo culture, but it is safe to say that, given the opportunity to have ceremonial items returned and certainly skeletal materials returned, that the Navajo Nation would make that request to these museums.

The Navajo Nation supports the intent of Senate bill 187, or rather the amendment that Senator Melcher has proposed. We do have some concerns with specific points therein, and I'll outline those in a few moments.

As proposed, this amendment authorizes the Federal Government to intervene, upon the request of tribal governments, in the recovery of individual items. We feel it does not address the circumstances, however, which permit the ongoing separation of these items from their originating cultures. Unless these causes are addressed, Native Americans and museums will continue to find themselves in adversarial situations. As long as it is legal for certain materials to leave Navajo and other Native American communities, some of them will undoubtedly find their way into museums, and the work of this proposed commission will never be completed.

One of the primary reasons we see for Native American materials leaving their homelands is the lack of adequate museum facilities with properly-trained Native staffs in these communities. In addition to the Federal commission, then, we feel that Native communities would be well served if other funds were authorized for the development of Native museums and specific training programs for Native staff members.

We recognize that no action would completely eliminate the illegal removal of certain materials from tribal lands and its subsequent sale to either unethical or unsuspecting private collectors, museums, and other institutions. But the development of Native American facilities to take care of these materials in their homelands where they belong with policies defined by their Native peoples would do more than anything else to at least curb that loss of material each year.

At this point I would like to address a few of the specific concerns that we included in our full testimony. Under section 2 in the subsection which states the existence of collections in museums and other institutions, we find that the finding is basically correct. However, it does not take note that in many cases the acquisitions of Native American materials by museums and other institutions, especially in archaeological collections, that the acquisition of these collections are mandated by laws such as the National Historic Preservation Act, the Archaeological Resources Protection Act, the American Indian Religious Freedom Act, and other preservation-minded laws.

We are not disputing the legality of these laws; we're merely bringing them to the attention of the committee. The interrelationships and potential conflicts between these laws and the proposed legislation we are discussing today are extremely complex and merit more study.

Under section 4, which has to do with the makeup of the commission itself, we feel it is absolutely imperative that, in addition to the commission members themselves, that the legislation authorize a highly qualified staff of experts to back up the commission members to insure that the commissioners themselves will be provided with the detailed knowledge of the Indian culture that exists within the United States today.

There are hundreds of very unique Indian cultures recognized by the Federal Government and it's imperative that they have input into the detailed understanding of these individual cultures when deciding individual cases.

Under section 9, which has to do with the definition of who can file a claim with the commission, in addition to what is stated in the amendment, we feel it is imperative that some provision be included to identify the proper authority within the tribal group within that social organization, identify their authority and to determine that they are, in fact, the ones who should be speaking on that particular matter for that tribe. This is especially important when dealing with ceremonial objects because ceremonial knowledge is usually the domain of the most traditional members of a tribe and is often not readily discussed outside of that culture.

Also in section 9, the subsection which deals with future protection of items once they have been repatriated, the loss of ceremonial items from Native American communities is attributable to many factors. We feel that although the amendment as it is worded presently says that measures will be taken to deal with the future protection, we recognize that museums often want assurance that they will be protected and that they won't show up on the market in a couple of years. Native Americans, Navajos especially, would also appreciate some more concrete assurance that protective measures will be taken so that these items are not again separated from Navajo culture.

A solution to this problem, at least a partial solution, as we see it, is to curb the commercial market that has developed over recent years. This may require an amendment to the American Indian Religious Freedom Act.

In closing, Mr. Chairman, I would like to address a subject which we recognize is peripheral to the thrust of the amendment. However, it is vitally important to the Navajo Nation as it impacts the interment of tribal members.

Unlike neighboring States, the Navajo Nation does not receive any assistance from the Veterans Administration for the purpose of creating and maintaining veterans' cemeteries on tribal lands. This means that Navajo families are often faced with the decision of choosing between a burial for a deceased Navajo veteran relative, choosing between a burial in accordance with Navajo tradition on tribal lands or choosing instead a proper veterans' burial somewhere far off the reservation on an established veterans' cemetery. The Navajo Nation feels that that's an unfair choice for these people to face.

Approximately 8,000 members of the Navajo Nation are veterans. Many of them have seen active combat duty, and the famous Navajo Code Talkers are decorated patriots. We would like to urge you and your committee to authorize Federal support for a Navajo Nation veterans' cemetery at the earliest opportunity.

Again, I would like to thank you for the opportunity to appear before you. If you have any questions, I would be happy to answer them.

[Prepared statement of Mr. Hartman appears in appendix.]

The CHAIRMAN. Have you had any contact with the Smithsonian, sir?

Mr. HARTMAN. I believe our office of historic preservation has had some discussions with the Smithsonian. To my knowledge, a formal request for return of skeletal materials has not been directed to them. To my knowledge, again, no skeletal materials in the Smithsonian at this time have been identified as being Navajo either directly related to living Navajos or from past Navajos.

I believe discussions are continuing, though, in the efforts to identify whether or not any of the skeletal material is Navajo.

The CHAIRMAN. Well, gentlemen, I thank you very much for your assistance today. You may be assured that this committee takes this matter most seriously. We will act upon this shortly.

While all of you are here, I would like to advise you that the record of the proceeding will be kept open so that if you have additional information you would like to submit or new information, you may do so. It will be kept open until the end of August. On September the 8th, at 9:30, this select committee will hold its markup on S. 187. Accordingly, may I suggest that if you have any ideas or thoughts about this measure, you submit them to us before then.

Thank you very much.

Our final panel consists of Mr. John Vance, former chairman and member of the Indian Claims Commission, and Mr. Walter

Echo-Hawk, staff attorney of the Native American Rights Fund of Boulder, Colorado.

Mr. Vance, welcome, sir.

STATEMENT OF JOHN T. VANCE, FORMER CHAIRMAN AND MEMBER, INDIAN CLAIMS COMMISSION, WASHINGTON, DC

Mr. VANCE. Thank you, Mr. Chairman. It is a privilege to be here.

I prepared a brief statement which I think is on file. I'll just ask that that be included and, if I may, make a remark or two about the procedures which have been discussed.

They are also discussed in a book that I just got yesterday, and it's called, "Irredeemable America." A group of scholars interested Indians have chosen to discuss the Indian Claims Commission and its effect. It's published by the University of New Mexico. It is an excellent piece of work.

As you recall, during the hearing last year Senator Melcher asked me to find out what we might be able to do to speed up the process. He asked me because 20 years ago he was of immeasurable assistance to me when I was trying to change some procedures at the Indian Claims Commission in order to expedite the work of the commission.

It was once again an example of Congress' inability to work its will on an established bureaucracy—when I heard this morning that the Department of Justice had some problems with this bill which has not passed yet from this committee, my blood went cold because it was the Department of Justice that killed the process when we were trying to effect it 20 years ago, to be exact—well, yes, 1969.

I believe that all the procedures in the act will expedite the process and grant equity just as if a complete and complicated legal trial were effected. It will be much better.

After hearing the testimony today of the opponents and the proponents, one is forced to the conclusion, if he were not already there, that Herman Melville was right when he said "We're all sprung from the same head. "Indeed we all have the same reverential attitude toward fallen tribesmen, clansmen, fallen members of our society."

Look at the effort we're making to return the bodies of our lost soldiers and sailors and pilots in Vietnam. This is altogether a human problem. It is way past time that we faced this as fellow Americans.

I thought the title of this book was so pertinent, "Irredeemable America." The Indians could not get back the land and now they cannot get back their sacred artifacts and the skeletal remains of their relations.

I stand ready, willing, and able, Mr. Chairman, to continue to participate in any way that I can to help the passage of this legislation.

Thank you, sir.

[Prepared statement of Mr. Vance appears in appendix.]

The CHAIRMAN. I just received a message from Senator Melcher. He wanted very much to be here to personally thank you publicly for your assistance in drafting this amendment, but, as you know, the Senate is presently considering the agriculture bill, which is exceedingly important to an important segment of our society, especially at this time with the terrible drought confronting many of them.

Senator Melcher has three amendments that he is in the process of presenting to the Senate, so he can not be with us at this moment. But, in his behalf and on behalf of the committee, I thank you for the assistance you have rendered in helping to draft this measure.

Mr. VANCE. Thank you, Senator.

The CHAIRMAN. As you pointed out, it is long overdue. I am pleased to note that the museums and institutions have begun to act, but by some strange coincidence they weren't acting before this Melcher amendment was proposed. We will make certain that the institutions continue to act.

I thank you, sir.

Mr. Echo-Hawk.

STATEMENT OF WALTER ECHO-HAWK, STAFF ATTORNEY, NATIVE AMERICAN RIGHTS FUND, BOULDER, CO

Mr. ECHO-HAWK. Thank you, Mr. Chairman.

Mr. Chairman, my name is Walter Echo-Hawk. I appreciate the opportunity to be here before the select committee. I realize that we're well into the noon hour, and I must say, sir, that I appreciate the vigor of the Government working overtime on our behalf, so I'll attempt to keep my remarks short.

I have submitted earlier a 29-page written statement to the committee together with 10 exhibits. I will not read those today. I'll attempt to summarize them as quickly as I can.

I would like to state that the Native American Rights Fund is a national native legal organization that provides legal representation to American Indian tribes, Alaskan Natives, as well as native Hawaiians on significant legal issues.

Our organization for some time now, sir, has been deeply concerned about the subject matter of this instant legislation. We as an organization are in a unique position to observe issues of this nature on a national basis, and it is our considered opinion that there does exist a compelling need for this particular bill, that with some minor modifications that this bill will be a workable bill, that it will serve to expedite a fair and impartial and timely consideration of repatriation requests. I see no reason, based on the testimony that I've heard thus far today, that the Bill would be divisive between the American native community and the museum community.

I feel that the Bill would establish a process, a set of legal remedies that could be invoked, in the event that disputes are not able to be solved.

Historically—and I don't want to dwell on that, but the Native people have been subjected to a systematic national expropriation of their dead by private, by State, and by Federal agencies and entities. That process continues today. This demonstrates, I think, a need for the legislation.

On the Federal level, as I have indicated in my testimony, we have seen at least 18,000 native remains that are in the possession of the Smithsonian. The numbers in my opinion are shocking.

We are all familiar with the manner in which these remains have come into the possession of the museum, and I believe that they are in some ways perhaps the innocent custodian of these remains. It's not necessarily the Smithsonian's fault, but someone has to address these issues in a responsible manner.

Thus far, we have seen a total absence of leadership on the part of the national museum, and it's been very disappointing. Ten years ago the American Indian Religious Freedom Act, section 2 of that act mandated a governmentwide review of policies that would interfere with Native religious freedom.

Rather than participate at that time in that governmentwide evaluation, the Smithsonian invoked a technicality to avoid and evade that process. In effect, Mr. Chairman, they indicated at that time that because they were not "a Federal department, agency, or instrumentality," that this section 2 did not apply to them. They, therefore, did not only not participate at that time, but they actively sought to undermine the museum recommendations that were in fact made by the Federal museums that participated in that yearlong process.

Since the decade that has intervened, we have seen no written policies on the part of the Smithsonian. We are only given information and necessary facts on a piecemeal basis. In fact, the Smithsonian is actively lobbying in State legislatures that I'm aware of against attempts in State legislatures to address this issue.

I have an exhibit in my testimony from an Assistant Curator Owsley, writing to the Nebraska legislature in opposition to a bill being advanced by one of my clients in that State.

So we can't look at this point in time at this late date to the national museum for leadership in this area. They are, in fact, opposing this process. I'm disappointed to hear that.

I would remark, sir, that in the testimony I heard this morning it was indicated erroneously that only one tribal repatriation request for human remains is pending. As Exhibits 8, 9, and 10 of my testimony reflect, there are, in fact, additional requests submitted not only by the State of Alaska, which entails 4,000 remains that are pending, but the Ogalala Sioux Tribe of South Dakota has a request that is pending, the Larsen Bay Native Village of Kodiak Island has a request that is pending.

I understand that the State of Iowa as well as the State of Massachusetts also have similar requests for repatriation of remains pending for reburial in accordance with State law.

Turning to the State level, if I may just briefly, to illustrate the need for this particular bill and its procedures, I presently the Pawnee Tribe of Oklahoma in negotiations with the Nebraska State Historical Society to repatriate the remains of at least 100 Pawnee graves that were expropriated and removed and are presently being held in custody by that State institution over the tribe's objection on behalf of nearest next of kin.

I am also representing the Pawnee Tribe against a private institution, which I think that this bill should also be sensitive to as well, whereby a private landowner in the State of Kansas presently has on display 150 bodies of dead Indians which he has uncovered from his land, removed the burial goods, shellacked the skeletons, erected a barn over the top, and presently charges public admission to see these remains, which are the probably ancestors of the present-day Pawnee, Arakira, and Wichita tribes.

Our efforts in these two matters, Mr. Chairman, have been protracted. They have been expensive. We have observed very dilatory, arbitrary, and inadequate procedures to address these within the existing procedures that are available to us by these institutions. My testimony and the various attachments to that illustrate in very graphic terms the inadequacies of available processes to us—short of litigation, short of State legislation, and short of national legislation.

Poor Indian tribes should not have to resort to an act of Congress or an act of State legislation in every instance in which they are confronted with unfair procedures. This bill will establish on a nationwide basis procedures that can be invoked, if necessary, after the parties have been given the opportunity to attempt to resolve these issues.

I have a few comments on the bill that I would like to briefly outline. They're all in my testimony.

I feel, Mr. Chairman, that the bill should very clearly cover private institutions and individuals and parties as well as public. I feel, Mr. Chairman, that the composition of the commission should at least be 50 percent native. Based on our experience in appearing before the Nebraska institution, it is far, far too easy to envision a stacked deck, and this matter affects basic fundamental common law, constitutional rights. Because the Bill addresses needed remedial relief that has resulted in real injury to living people today, there is no reason why the Native people should not represented on an equal footing in this commission. I feel strongly that there should be at minimum 50 percent participation. I also believe that the Indian preference laws of Congress should also be applicable to all hiring aspects on this particular commission.

At pages 27 and 28, Mr. Chairman, I set forth needed legal guidelines and evidentiary guidelines which I submit are so well established and embedded in the body of American common law as well as Federal Indian law and fundamental policy that they should be reflected, in my opinion, Mr. Chairman, on the face of the bill in order to provide guidance to this commission.

We have observed in the existing procedures that many times the guidelines are unduly arbitrary, the rules are made up as they go along. We have seen increasingly strict demands of proof on the part of tribes that are almost impossible to meet. I think this morning's testimony concerning the Cheyenne pipe was a good example of that.

So we have prepared what we believe to be appropriate guidelines for the Commission decision-making.

I would also like to say that at the heart, in my opinion, of this voluminous number of skeletons that we see today is a result of the interpretation of existing Federal laws. Mr. Chairman, the Antiquities Act and the Archaeological Resources Protection Act have been interpreted to mean that Native bodies and graves in fact "belong" to the Federal agencies as their "property". These laws have been interpreted in that manner, and it has resulted in hampering agencies such as the Park Service from assuming a leadership role here. They can't give away Federal property.

That, Mr. Chairman, is a significant departure from the body of American common law. One does not own a human body. This is not a chattel. It has never been considered as such in common law. To interpret these Federal statutes to say that dead bodies are property that can be owned and must be considered property by the Federal museums is violative I think of equal protection. I think it is also violative of the due process clause, and I don't think it was intended by Congress to mean that, particularly where specific kin have been identified and specific tribes have been traced to these remains.

I would therefore recommend and request that this legislation not only incorporate these legal principles that I have referred to at pages 27 and 28, but do so expressly regardless of any other existing statute, so that it becomes clear that our Native dead are not property belonging to a Federal agency.

This concludes my remarks, Mr. Chairman. I appreciate the opportunity to be here. I had a few other subjects I would like to cover concerning some of the concerns expressed by some members of the first panel, but I believe that they have been adequately covered.

Our organization, the Native American Rights Fund, stands ready to be of any assistance that we can in the future. We want to personally thank Senator Melcher and his staff for spending the time on this important matter that is very close to us. We commend the Senator from Montana for that effort.

We also extend our appreciation to this select committee for taking time out to listen to this important matter. Thank you, sir.

[Prepared statement of Mr. Echo-Hawk appears in appendix.]

The **Chairman**. Thank you very much, Mr. Echo-Hawk.

The last subject discussed by you is a matter of major concern to this select committee, and I hope that you will get together with my staff to work out appropriate language. I am referring to the legal concept of title or ownership of skeletal remains and bodily remains.

I can, for example, understand a museum claiming title to the jawbone of the Peking man because there is no one around to lay claim to that or to the big tooth of the Australia pithicus found in Otowi Canyon, but we are talking about thousands of bodies that were sent to Washington from battlefields, bodies that somehow can be identified as far as tribe or region is concerned. I would like to get a clarification of whether any museum or any entity can hold title to such remains.

The discussion that you carried on is very important to us. I hope you will sit down with the legal staff of this committee to work out appropriate language that would clarify this.

Mr. **Echo-Hawk**. Thank you. I'd be more than happy to do so.

The **Chairman**. And to all of you who have participated in this hearing, I thank you on behalf of the committee. The subject discussed is obviously one of grave importance not only to the Indians, but I think to the good name of the United States of America. There is much at stake here.

The **Chairman**. On September the 8 we will do something about this. Until then, I thank you.

This hearing will stand in recess.

[Whereupon, at 12:45 p.m., the committee recessed, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF SENATOR MELCHER

MR. MELCHER. THIS HEARING IS TO RECEIVE TESTIMONY ON A SUBSTITUTE TO S. 187, WHICH I INTRODUCED RECENTLY TO CREATE A PROCEDURE TO RESOLVE DISPUTES BETWEEN NATIVE AMERICANS AND MUSEUMS OVER SKELETAL REMAINS, GRAVE GOODS OR CEREMONIAL ARTIFACTS WHICH ARE IN MUSEUM COLLECTIONS.

I INTRODUCED THIS BILL TO CORRECT WHAT I BELIEVE IS A NATIONAL DISGRACE WHICH EXISTS BECAUSE THOUSANDS OF INDIAN SKELETAL REMAINS AND GRAVE GOODS HAVE BEEN SYSTEMATICALLY COLLECTED BY MUSEUMS. MUSEUM COLLECTIONS ALSO INCLUDE CERTAIN CEREMONIAL ARTIFACTS, WHICH ARE OFTEN NECESSARY TO CONTINUE TRIBAL RELIGIOUS CEREMONIES. INDIAN TRIBES ACROSS THE COUNTRY HAVE TRIED, WITH LIMITED SUCCESS, TO RETRIEVE HUMAN

REMAINS AND CEREMONIAL OBJECTS IN ACCORDANCE WITH THEIR RELIGIOUS BELIEFS.

I BELIEVE CONGRESS MUST TAKE ACTION TO DEMONSTRATE BASIC HUMAN RESPECT TO NATIVE AMERICANS ON THESE ISSUES WHICH ARE FUNDAMENTALLY IMPORTANT TO THEM. INDIAN REMAINS AND RELIGIOUS OBJECTS ARE SOMEHOW VIEWED AS "SCIENTIFIC" CURIOS WHICH ARE MORE IMPORTANT TO MUSEUMS AND SCIENTISTS THAN TO THE INDIANS. I DO NOT UNDERSTAND NOR CONDONE THIS. **WE RESPECT THE RIGHTS OF OTHER AMERICANS IN THESE MATTERS AND IT IS TIME WE BEGIN AFFORDING COMMON RESPECT AND DECENCY TO INDIANS AS WELL.**

LAST YEAR THE COMMITTEE HELD A HEARING ON S. 187, A BILL I INTRODUCED TO ADDRESS THIS SITUATION. SOME CONCERNS WERE EXPRESSED ABOUT MY ORIGINAL PROPOSAL. IN RESPONSE, I HAVE

DEVELOPED A SUBSTITUTE AMENDMENT WHICH I BELIEVE IS RESPONSIVE TO THE MAJOR OBJECTIONS WHICH WERE RAISED AND PROVIDES A FAIR PROCEDURE. ON ONE HAND, IT DOES NOT ADDRESS THE MAJOR OBJECTION OF THE MUSEUMS, WHICH IS THAT LEGISLATION IS UNNECESSARY. ON THE OTHER HAND, THE PROCESS I PROPOSE HAS PROVEN WORKABLE IN THE PAST, WITH THE INDIAN CLAIMS COMMISSION AND PROVIDES A CLEAR CHECK AND BALANCE SYSTEM UNDER WHICH MUSEUM INTERESTS WOULD BE HANDLED EQUITABLY.

THE SUBSTITUTE AMENDMENT WOULD ESTABLISH A MUSEUM CLAIMS COMMISSION WHICH WOULD HAVE THE AUTHORITY TO RESOLVE THESE DISPUTES BASED UPON THE EVIDENCE AND INFORMATION DISCLOSED PERTAINING TO INDIVIDUAL CLAIMS.

TODAY WE WILL HEAR ABOUT A FEW INSTANCES WHEN MUSEUMS HAVE RETURNED SKELETONS OR CEREMONIAL ARTIFACTS TO TRIBES. WE WILL ALSO HEAR OF NEW POLICIES WHICH MUSEUMS HAVE DEVELOPED ON THE ISSUE OF REPATRIATION. I BELIEVE THE TRIBES WILL ALSO TELL US OF REQUESTS TRIBES HAVE GONE TO COURT AND WON CASES OF THIS NATURE. HOWEVER, VERY FEW TRIBES HAVE THE RESOURCES TO ENGAGE IN PROTRACTED COSTLY LITIGATION.

WE WILL HEAR TODAY THAT A FEDERAL LAW IS UNNECESSARY. I BELIEVE THAT A FEDERAL LAW IS ABSOLUTELY ESSENTIAL. ALTHOUGH A NUMBER OF STATES HAVE BEEN RESPONSIVE TO THE TRIBAL REQUESTS, THE BONES AND OBJECTS ARE OFTEN LOCATED IN OTHER STATES. IN SPITE OF WELL-INTENTIONED POLICIES, NOT MUCH REPATRIATION HAS OCCURED. IN ADDITION, POLICIES ARE NOT ENFORCEABLE. I BELIEVE IT IS IMPERATIVE TO ENACT A FEDERAL LAW MUST BE PASSED TO GET ON WITH THE BUSINESS OF RETURNING ITEMS TO TRIBES WHEN THE FACTS WARRANT SUCH A RETURN.

STATEMENT BY

DEAN W. ANDERSON

UNDER SECRETARY

SMITHSONIAN INSTITUTION

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

WASHINGTON, D. C.

JULY 29, 1988

Thank you, Mr. Chairman.

I appreciate the opportunity to appear before you today and to comment on Senator Melcher's amendment in the nature of a substitute for the text of S.187. We oppose the amendment, but in doing so it seems appropriate to recall the remarks of Secretary Adams at the hearing in February, 1987 on the original measure. At that time he acknowledged the good intentions behind the legislation, but suggested then, as we would now, that it was probably unnecessary, and, in any case, premature.

The continuing interest in the issues addressed in S.187 and the diligent efforts that have been made to accommodate the varying points of view surrounding them are certainly evidence of the on-going quality of those intentions. It would seem, however, Mr. Chairman, that such interest and effort, as well as the leadership that you and others have provided over the months since that initial hearing, may have reduced even further the necessity for legislation.

The primary reasons for this circumstance are found in the responses of the museum community in general and the Smithsonian in particular to the issues you have set out. At the Institution this response has taken several forms, all of which reflect a heightened understanding of and sensitivity to the perspectives of American Indian people and a commitment to accommodate expressions of those perspectives insofar as it is possible for us to do so.

As the Secretary reported last year, in November of 1985 we contacted the chairmen of 225 Federally-recognized tribes to inform them of our holdings of American Indian skeletal remains derived from their general geographic areas and to describe our methods of storage and visitor access. To date, nineteen inquiries from tribes and non-tribal sources have been received. We have replied to all of them, and in some instances have had subsequent exchanges of correspondence. To date, only the Blackfeet have sought to pursue identification and repatriation of remains. As you know, we have engaged in productive discussions with their representatives which have culminated in our study and casting of the remains of sixteen individuals prior to their return, which is imminent, to tribal lands in Montana.

In addition, an extensive search of records at the Smithsonian's National Museum of Natural History for named individuals in our collection of human skeletal remains has revealed that those of fourteen individuals from other tribes also are included. Anthropologists and archeologists at the Museum have examined the circumstances of the recovery of those remains, as well as historical information about each individual. The historical and skeletal data have been correlated, and agreement in the areas of age, sex, and race has been carefully noted.

The names of the individuals and information about them have been furnished to the tribes with which we believe they were affiliated. Thus, we hope to locate descendants and to ascertain their wishes with respect to the disposition of the remains. So far we have had a letter from one of the tribes, but have yet to learn whether or not living descendants exist.

With respect to ethnographic material, since February of 1987 we have had two inquiries. Each has required substantial research into collections documentation and related historical data which has resulted in varying degrees of ambiguity about the objects and their acquisition. At the present time we are seeking further information from our correspondents in an effort to arrive at more certain conclusions.

I should acknowledge here that there have been problems of timeliness on our part in responding to inquiries and in conducting the research I have described. The tasks associated with the latter function are extensive and are additive to the established obligations of the staff that must address them. As a result, requests for information have not been handled as promptly as we or those who inquire would wish.

To ameliorate this situation we have requested authority to reprogram the sum of $200,000 in our Fiscal Year 1988 appropriation and direct it to this purpose. The money originally was provided for a feasibility study relating to possible locations for the Museum of the American Indian, Heye Foundation. Inasmuch as it currently appears that the Museum can be located only in New York, such a study would seem to be an inappropriate use of Federal funds. If our request is granted we anticipate hiring additional researchers to assist in the identification of skeletal remains and ethnographic material, as well as in the organization and analysis of museum records, so that we will have a fuller understanding of the nature, range, and origins of our collections and a capacity to respond more expeditiously to those who have interests in them. We would expect to sustain these activities in future budget requests.

The tasks of identification are crucial to any consideration of repatriation of material in museum collections. They must of necessity precede all others if repatriation is to proceed in a manner that meets the concerns of the parties involved. Open lines of communication also are significant elements in the process because information must flow freely between the parties and the interests of each must be known to the other.

As an aid in understanding the nature of those interests Secretary Adams initiated a series of dialogues with tribal representatives and with leaders of various national organizations of American Indian people in the spring of 1987. While the primary focus of these discussions has been the repatriation of skeletal remains in our collection, they also have extended to the representation of American Indian people in museum exhibitions and to the needs and opportunities for training American Indians to work with the materials of their own culture.

We have viewed these dialogues also as part of a process for building bridges between the Institution and American Indian communities, and have welcomed their impact on Smithsonian programs. Chief among these are the exhibit halls at the Natural History museum where some material considered offensive by Indian people has been removed from exhibition. More important, however, is the stimulus the dialogues have given to our plans for renovating the halls altogether so that they will reflect not only contemporary scholarship, but also the vitality, diversity, and rich heritage of contemporary American Indian culture. The planning and scholarly activities required for this undertaking will engage Smithsonian staff from a variety of disciplines, and also will benefit from advice and review by American Indian people at a number of stages.

All of these efforts are, we believe, well in keeping with the spirit of the proposals you have outlined and consistent with the concepts Secretary Adams has outlined in the two columns he wrote last year for Smithsonian magazine and which are appended to my testimony. The process of their fulfillment certainly is in its infancy, but it is one that seems to offer a reasonable means of reaching resolution. Encouraging a process in which institutions and tribal representatives work cooperatively on matters that are highly individualistic and susceptible to resolution only on a case-by-case basis seems far preferable to one which is inherently adversarial, expensive, and time-consuming and for which there appears to be no substantial requirement. Furthermore, we have been advised that the Department of Justice has constitutional concerns about the proposed amendment. These will be outlined in a letter which, we understand, is en route to the Committee.

In view of the foregoing, I would respectfully request, Mr. Chairman, that the authorities proposed not be pursued at this time.

May, 1987
Smithsonian

Secretary Adams' comments

Smithsonian horizons

We have an obligation to return the Indian skeletal remains in our collections to tribal descendants

The past is another country, although seldom marked off by any well-defined watersheds or frontiers. Finding absent what we now take for granted can be disconcerting. Equally disconcerting is an encounter with acts and attitudes that we would prefer to forget were ever part of our historic heritage.

In 1862 an Army Medical Museum was established in Washington. The study of specimens illustrating war-related causes of death and disease would, it was hoped, help to reduce mortality and suffering. Early collections were made on the Civil War battlefields of Antietam, Fredericksburg and Gettysburg (including the amputated leg of Maj. Gen. Daniel Sickles, who in later years periodically returned to see it), while others were acquired from hospitals or by purchase. Barrels of whiskey seem to have been the best (or most widely available) preservative for soft tissue, making it less than surprising that the Museum's permanent holdings concentrated on skeletons.

At the end of the Civil War the Museum's only available field of action shifted westward. As the struggle for control of Indian lands entered its final, climactic decade, Army medical officers on active duty there were urged to continue to seek osteological and other specimens. Animal pathologies and "monstrosities," stinging insects, reptiles and miscellaneous curiosities all began to find their way to Washington from frontier postings.

However, Indian weapons, relics of all kinds, and especially skulls were the major target of interest. Ostensibly these collections were "to aid in the progress of anthropological science by obtaining measurements of a large number of skulls of the aboriginal races of North America." In some regions, remains left by long-vanished Mound Builders were a handy source of supply. Western battlefields were another collecting ground of choice. And in the same zealous spirit, where better might well-preserved remains be found than in Indian cemeteries still in use? A few craniums were reportedly severed and exhumed by dark of night, not long after their interment.

The Smithsonian's role was largely passive. By the mid-19th century, gifts, explorations and archaeological excavations had already brought human skeletons into its collections. Now a new institution was involved in the same effort. In an avowed interest in "harmonious cooperation" between duly authorized governmental establishments, and probably bowing to circumstance, Secretary Joseph Henry in 1869 proposed an exchange that defined separate spheres of activity. Our specimens relative to human and comparative anatomy, nearly 1,600 in number, were transferred to the Army Medical Museum. In return, the latter's considerable holdings "illustrative of the manners, customs and arts of the Indians of this continent" came to the Smithsonian. The division of labor continued, to all appearances amicably, until the Army's interests took a different turn at the outbreak of the Spanish-American War. Shortly thereafter, skeletal remains representing nearly 4,000 individuals came (or, in many cases, came back) to the Smithsonian, where they remain today.

So far, nothing has been said about how the Indians felt about all this. In an admittedly limited perusal of the archives, I have not found their feelings mentioned. But we are now in a different era, with different sensitivities and with rights less casually delimited on the basis of ethnic identity. In court proceedings, Congressional hearings, and publications of many kinds, modern native Americans are having a lot to say about it, angrily and eloquently.

Craniums stolen from actively used burial grounds were illicitly taken and must be returned to their tribal descendants. Stolen or not, we at the Smithsonian recognize an obligation to return all remains that are individually identifiable from accompanying records. Battlefield pick-ups are always a difficult problem. Individuals can almost never be identified, and with tribes often having fought in alliance, to whom can remains be returned?

Yet to be faced is the issue of archaeologically recovered skeletons reflecting many millennia of the prehistoric occupation of North America. Only archaeology, in the absence of written records, can uncover this important chapter of the whole human story. It cannot be forgotten that these large collections of skeletal materials, especially where they can be accurately placed in space and time and tribal affinity, are scientifically *useful*. New laboratory techniques establish broad outlines of ancient dietary intake and genetic codes. Positive contributions to modern native American health problems are a not unrealistic possibility. But first a lengthy and unfortunate record has to be acknowledged, and a basis found for mutual trust in spite of it. Through a blur of possibly jumbled specimens and archival ambiguities, the potentially conflicting claims of tribal affinity, private ownership and scientific freedom of access need to be somehow brought into balance and adjudicated. The past is a heavy burden, and there is not much time.

NOVEMBER, 1987
SMITHSONIAN

Secretary Adams' comments

Smithsonian horizons

Recent discussions with Indian leaders have raised questions about repatriation of skeletal remains and sacred objects

The ruins at Puye, on the lands of the Santa Clara Pueblo in northern New Mexico, go back almost 800 years. Densely clustered stone-walled rooms surround a square plaza on the top of a mesa. Other rooms, cut into the nearly vertical bluff, anchored multistoried dwellings on its lower talus apron that have now crumbled away. A plausible estimate is that this was once a substantial town with more than a thousand rooms. It is understandably a hallowed place for the people of Santa Clara.

At the invitation of the pueblo, several of us from the Smithsonian recently joined a number of native American political and religious leaders for a full day of discussions in that lovely setting. Many had come for the Indian Market held annually in nearby Santa Fe, providing a welcome opportunity for wide-ranging exchanges on matters of common interest. Principal among them were rising demands for the repatriation of skeletons and sacred objects, now widely scattered in the world's museums, and for museum exhibits less devoted to static, stereotypical displays of the timeless past and more to the dynamism, diversity and continuing vitality of the native American culture.

There is no serious question about the need for some repatriation. Unambiguous records of early acquisitions are often lacking, but objects of ritual significance that were common tribal property seldom if ever could have come legitimately into nontribal hands. Similarly, descendants have an unquestionable claim on the remains of their known ancestors, at one time collected in ways that do not always stand scrutiny (*Horizons*, May 1987). Individual circumstances of course vary hugely and need to be carefully researched before action is taken, but there are grounds for at least a partial accommodation.

The difficulties will increase as we go further. Assuming (as is surely implied by the Smithsonian's charter) that scholarly research and public education are valid ends of public policy, how does a line get drawn around either ancestry or sacredness as a preeminent principle? A north Rio Grande pueblo participant spoke out eloquently for the sacredness of the common grinding stones she saw in a museum. She touched them in awe, sang to them, and was troubled in her heart to see male visitors unknowingly handle these important symbols of a female domain. In her view, little could rightly remain in museum collections. An Iroquois speaker, on the other hand, would be content with a much more circumscribed zone of sacredness—one applying only to a small class of objects that still were "important to the integrity of the nation." But promising as this approach is, how and by whom will it be defined?

No less vexing difficulties lie ahead with regard to human remains. Repatriation has been agreed upon where individual identity can be established, and an extension is being strongly pressed for cases in which tribal affinity is reasonably unambiguous. But is Puye ancestral to Santa Clara Pueblo, or did new population elements enter after a hiatus? In most regions other than the Southwest, given the displacements that generally were precipitated by the advancing frontiers, descent as evidenced by continuity of occupation can rarely be established before the most recent century or two.

Awaiting ultimate resolution here are sharply opposed interests. On the one side, Indians with an inclusive sense of their native American ancestry and a deep and growing anger at what is perceived as (and in fact often has been) the differential treatment of excavated Indian remains from those of white settlers. On the other side, physical anthropologists are enabled by new laboratory techniques to date skeletal remains with greatly improving accuracy, to recover antibodies and antigens indicating exposure to diseases and to find direct evidence in bones of major subsistence patterns. "We don't care what our ancestors ate," several speakers insisted at Puye. Yet as the claim of direct ancestry becomes increasingly hard to establish, the contrary claim of scientists gains force that this is the best substitute we will ever have with which to reconstruct what is, after all, part of our common background as a multiethnic nation.

The possibility of bringing the Museum of the American Indian from New York City to the Mall in Washington was woven into the fabric of our discussions. Senator Daniel Inouye's initiative toward this end has been warmly endorsed by the National Congress of American Indians. If this happens, the Smithsonian will become the center not just of an ongoing dialogue like that at Puye, but also of extensive training programs and new forms of outreach. And both these concerns of American Indians and their ill-recognized but extraordinary achievements would receive new, richly deserved attention, not only from Washington's vast museum-going stream of visitors, but from some hundreds of near neighbors on a well-known Hill to the east.

American
Association
of
Museums

Testimony of the

American Association of Museums

presented by

Michael J. Fox

Director, The Heard Museum

on

Substitute Amendment to S. 187

The Native American Museum Claims Commission Act

before the

Select Committee on Indian Affairs

United States Senate

July 29, 1988

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Mr. Chairman, members of the Senate Select Committee on Indian Affairs, I appreciate the opportunity to appear before you today to provide testimony on the amendment to S. 187, the "Native American Museum Claims Commission Act." My name is Michael J. Fox and I am here representing the interests, concerns and cooperative spirit of our nation's museum community as a member of the governing body of the American Association of Museums (AAM). The AAM, established in 1906, is an organization of over 10,000 members including approximately 8,000 museum professionals and 2,300 art, history and science museums, historic sites, science and technology centers, aquariums, botanical gardens, arboreta, nature centers, zoos, and specialized museums. I also serve as president of the nine-Western states museum professional association, the Western Museums Conference, which is in the region of our country with the single largest concentration and population of Native American communities. I direct the Heard Museum in Phoenix, Arizona, a nearly 60 year old, internationally respected, wholely privately governed and funded anthropological institution dedicated to the sensitive portrayal of the beauty and diversity of Native American material culture, lifeways, art, spirituality, language and traditions.

The hundreds of museums in the United States which today serve as trust managers of Native American collections owe Senator John Melcher a debt of gratitude for the initiative representated by the introduction of S. 187. Because of this initiative and other activities, I believe the intent of the proposed bill and its amendment is already being largely realized. Nationwide, museums and their staffs -- archaeologists, anthropologists, ethnologists -- and even the general public are demonstrating a renewed commitment of mutual cooperation and trust with Native Americans on matters regarding the collection, preservation, documentation, exhibition and repatriation of Native American ceremonial artifacts and human remains.

The introduction of S. 187 complements Congress' interest in the issue of Native American materials in museums extending back to the passage of the American Indian Religious Freedom Act in 1978 and the Archaeological Resources Protection Act of 1979. These laws have helped the museum community to recognize the inherent rights of Native Americans in the exercise of traditional religions and to protect archaeological resources on public and Indian lands. During this period also two publications widely regarded in the museum field were developed and published by the AAM: Museums Ethics (1978) and Museum Trusteeship (1981). Each had sections relating to treatment of Native American collections. Through the Congress' pursuit of the fair treatment and respect of Native American cultures, the diligence of Native Americans to retrieve and sustain their religious practices and traditions, and the many examples of close cooperation between museums and Native Americans, the museum community has become increasingly sensitive to the importance to Native Americans of materials within museum collections.

The museum I direct and many others provide examples of this cooperation and sensitivity. A decade ago, the Heard Museum instituted in its Collection Policy a formal procedure to respond to requests for the return of sacred objects; very simply, each request would be considered on a case-by-case basis. Elsewhere in Arizona, a state where there are 18 tribal governments, museums have consistently shown responsibility in encouraging amicable, trusting, cooperative relationships and open communication with our Native American communities and cultural leaders. We have positive partnerships. At the Heard Museum, we are currently serving as the intermediary in the transaction of returning to the Navajo Nation a sacred medicine bundle which is in the hands of a private collector. Approximately six years ago our Museum called in Hopi spiritual leaders to examine our collections. When religious objects were identified we worked together, not with the suggestion to return the objects, but to have the museum assure their well-being consistent with Hopi belief. Similarly, when in the past year the Heard Museum received an internationally touring exhibit of Native American artifacts, our curatorial staff, including Native American personnel, removed from exhibitry an object which they identified as potentially culturally insensitive.

Since its inception, the Museum of Northern Arizona has interacted with Hopis, Navajos and other Indian groups in an atmosphere of mutual trust and respect. The museum holds all archaeological material collected from Indian tribal lands in trust for the members of the appropriate tribe. Hopi authorities have intentionally been placing sacred objects in the Museum's care. A case in point is the history of collections gathered by the Museum from excavations at the Hopi village of Walpi. These collections were initially placed in the Museum for care and preservation, but when village clans requested the restitution of certain ceremonial objects, the artifacts were promptly returned. Concerned with the preservation and security of these artifacts, Hopi authorities subsequently asked Museum officials to resume responsibility for the safekeeping of the objects.

In Tucson, at the Arizona State Museum, recent experiences in providing collection information to Indian communities necessitated the addition of a staff member to manage such requests.

In other regions of the country, museums are also treating their collections responsibly and working cooperatively with the Native American community. Like many museums in South Dakota, the Robinson State Museum in Pierre, South Dakota, has extensive Native American collections primarily of Sioux origin. The museum is sensitive to the traditions and beliefs of Native Americans, and has maintained good relations with the Sioux community. In developing the museum's permanent collection on the Sioux Indians, museum professionals worked with a number of Sioux individuals, including spiritual leaders, on questions of theme and label content and the treatment of sacred objects. In addition the museum staff met regularly with the staff of the South Dakota Office of Indian Affairs. The resulting exhibit was particularly well received by the Sioux community and contributes to an appreciation of Sioux culture by all South Dakotans, and by all visitors from beyond the state's borders.

When the Haffenreffer Museum of Anthropology in Bristol, Rhode Island, has displayed artifacts of a sacred nature, museum staff has made purposeful efforts to exhibit such materials only in a sacred context. Staff consults members of appropriate tribes for advice as to how and even if such material should be displayed. When representatives of the Iroquois tribe expressed their objection to the display of several False Face masks in an Iroqouis exhibit, museum staff did not place the masks on display. The tribe is provided with full access to the masks and other materials in the collection and permitted to use such objects in tribal ceremonies. Similarly, a Crow medicine bundle in the Robinson's collection is available to Crow medicine men and is not normally displayed, except in context with shield, headdresses and other insignia relating to warrior's ritual equipment. It has never been opened by museum staff nor have the contents even been displayed or viewed by anyone except designated Crow representatives.

The Museum of New Mexico also actively seeks the guidance of Native American groups in the handling of potentially sensitive material from a 15 member Advisory Committee. The Committee includes representatives from the Rio Grande, Acoma, Zuni and Hopi Pueblos, the Navajos, Western Apache and Jicarilla Apache Tribes. The Museum has an effective mechanism in place for consulting with all the major Indian cultures in New Mexico and northern

Arizona.

Acquiring new materials for the collection by purchase or gift must be done in accordance with the Museum of New Mexico policy and in consultation with the Indian Advisory Committee. Dealing with older collections is done on a case-by-case basis upon written request from groups having legitimate historical claims upon the objects. For instance, the Museum recently returned three Zuni War Gods following a written request from the Zuni Indian Tribe and subsequent negotiations. Other cases are currently being considered, such as a request from the Cochiti Pueblo to return several Kiva bells from an archaeological site excavated over 20 years ago.

These are but a few of the many examples that demonstrate the increasingly healthy relationship and cooperative spirit in which Native Americans and museums are working. There are also instances where museums have not acted in as sensitive a manner as these that we have mentioned. But the AAM and many individual institutions are taking a leading role in encouraging museums to assess their policies, to work with Native Americans and all other groups that have a special interest in their collections, and to be responsive to their communities. External forces, including the Native American community, the Department of Interior and the National Park Service, state and local governments and the United States Congress (such as by the introduction of S. 187), are also playing a significant part in encouraging museums, as collectors of our national heritage, to reach out in new and dramatic ways to their various publics. We believe that we are at an important crossroads at which these cooperative efforts will produce a vigorous and effective case-by-case resolution of potential conflicts without long, costly and divisive litigation.

The increased sensitivity on the part of the museum community resulted in the creation of a task force in 1987, at the recommendation of the AAM Council (the 76 member governing body of the association), to develop a policy to guide museums on the issue of repatriation of Native American ceremonial objects and human remains. Task force members were selected based on their exceptional knowledge of and experience with the issue and included both Native Americans and museum professionals.

The task force worked over the course of four months to complete research and drafting the policy for submission to the AAM Council at its January 1988 meeting. A thorough and substantive discussion on the recommended policy was heard at the meeting; amendments to the policy were made upon the consent of the Council, and the policy was subsequently and overwhelmingly approved.

The AAM policy on repatriation employs several guiding principles. First and foremost, in all requests for the return of Native American materials from museum collections, the policy holds that the resolution of requests is best accomplished on a case-by-case basis. The policy states, "Only by a case-by-case approach can proper consideration be given to the diversity of specific native communities and the ethical, fiduciary and legal responsibilities of individual museums." The policy further calls for museums to demonstrate sensitivity and respect for the meaning and value of Native American materials within the context of each museum's mission to preserve, interpret and exhibit its collections.

Museums' acquisition of Native American materials by illegal or unethical means over the course of history is deplored in the AAM policy. Although museums may have acquired materials through ethical or legal standards of the past, the policy stresses the need to judge the method of acquisition against current laws and ethical standards when requests for repatriation are made.

Finally, both the task force members and the AAM Council felt strongly that the policy should treat the repatriation of ceremonial objects and human remains separately. As each is distinctly unique in its form, substance and representation of the cultures and traditions of Native Americans, the policy recommends that museums consider separate and distinct criteria for returning ceremonial objects from those of human remains.

The policy reflects the collective thinking and expertise of the task force and AAM Council membership. It is intended to serve as a living document, providing guidance for museums in developing their own sound policies and standards in managing Native American collections and any requests for return of materials from those collections. Continued support from the AAM in the area of technical assistance will further the association's efforts to assist museums in their work with Native Americans. The adoption of this policy marks a national movement to create appropriate museum collection policies, to work with Native American and all other groups that have special interest in their collections and to be more responsive to these communities. It is dramatically taking hold. With your permission, Mr. Chairman, I request that the full text of the AAM repatriation policy and the list of task force members be made part of the record.

Although the AAM was not allowed to appear before the Committee at its February 1987 hearing on S. 187, we did submit a written statement for the record. In our written testimony we identified a number of provisions in the original legislation that we deemed unfair and contrary to the intentions of its sponsors. Although the substitute amendment is responsive to some concerns we had then about details of implementation, the AAM must continue to oppose the centerpiece of the bill, namely the creation of a federal commission to adjudicate disputes between Native Americans and museums over the repatriation of ceremonial objects and human remains, on the grounds that such a body would alienate the two communities, placing the relationship between museums and Native Americans in an adversarial context, and would remove the authority and rights of museums in determining the fate of their collections held in public trust.

Additionally, we believe several provisions in the substitute amendment would be costly and burdensome to museums, to Native Americans and to the federal government and taxpayers, and would allow the claims commission to intervene unnecessarily in the negotiations between a museum and an Indian tribe in their efforts to achieve a mutually agreeable resolution to the disposition of Native American materials in museum collections. We also question the analogy between the proposed Native American Museum Claims Commission and the earlier Indian Claims Commission. The Indian Claims Commission involved the resolution of conflicts not between Indians and third-parties such as museums, but conflicts brought directly against the government of the United States for dollar damages, not for the return of tribal lands or native materials.

As exhibited in AAM's testimony submitted to the Select Committee last year, and in AAM's Repatriation Policy, we strongly hold to the belief that claims for the repatriation of Native American ceremonial objects and human remains are best resolved on a case-by-case basis between the two principal parties on the local level. This method assures that each individual case is treated with proper and necessary respect and that the unique nature of each individual object is considered. We continue to believe that this is the most equitable method for achieving resolution to repatriation requests. Because of the uniqueness of almost any given repatriation request, the establishment of any general national criteria or precedent by which the disposition of distinct and unique objects are determined is, in our view, unworkable and ultimately unfair.

Regarding the details of the amendment and some of the assumptions upon which they are based, we have these comments. Sec. 2(b) states that collections were acquired through excavations, contributions from the U.S. military and the spoils of war, and through donations or purchase of items from private individuals. It is true that many museums acquired such materials through the donation of objects by private individuals, including members of Indian tribes, and through archaeological excavations, many of which were conducted under permits issued by the federal government or by tribal governments. Although it may be true that collections within some federal museums were obtained by the U.S. military and the spoils of war, such is not true for the vast majority of museums that maintain Native American collections. By implying that museums benefited through wars at the expense of Native Americans and their heritage, the legislation inaccurately assumes that museum collections were unethically or illegally acquired. In fact, significant items of Indian culture were entrusted to museums by tribal or religious leaders with museums designated to act as trustees for the benefit of the Indian people. Such entrustments, freely executed by Indian tribal or religious leaders, are surely neither unethical or illegal.

As we have stated, we oppose the principle of the creation of the Native American Museum Claims Commission. In addition to being opposed to its function, we believe the proposed structure of the body as well as other provisions indicates an inequity that permeates the amendment. Under section 4, the only stipulations as to the professional background and expertise of the commission members are: 4(c) at least one shall be Native American; 4(d) each member must be significantly interested and experienced in matters of the Commission; and 4(e) no more than two members shall be of the same political party. With only these requirements, all three commission members could conceivably have no professional museum experience. We find the exclusion of a requirement that at least one professional from the museum community to serve on the commission, who is significantly experienced and sensitive to the issue of repatriation, and who would be profoundly more knowledgeable about the mission and trust responsibilities of museums (than someone who is not a museum professional), to be short-sighted and inequitable.

In addition to our concern regarding the composition of the commission, the mere size of the commission - three members - raises questions. Although the commission is to include a staff [sec. 5 (a)(2)], to provide support in investigating claims brought before the commission, a commission of three members, two of whom would constitute a quorum [Sec. 4(1)], would not provide the knowledge of the diversity within the Native American community and the understanding of the functions of museums, to form measured and equitable resolutions to requests.

Sec. 9 (page 12) sets out the process for the resolution of claims submitted to the claims commission by the governing body of an Indian tribe or the Office of Hawaiian Affairs of the State of Hawaii. Sec. 9(c) prescribes when the filing of a claim is to be in order, the earlier of: six months after the date in which a written notice was submitted to the museum; the date in which the museum refuses to negotiate; or 90 days after the notice is submitted and no response received by the museum. We believe that museums today are becoming increasingly responsive to requests for the repatriation of Native American materials held in their collections. However, the process of documentation of all objects in museum collections, particularly those of the pre-contact era, is not only a lengthy and time consuming endeavor, but also an expensive one, often cost-prohibitive for museums whose budgets are already stretched to the breaking point.

Six months, we believe, in any case is an inadequate amount of time in which a museum must provide documentation on the object(s) requested for repatriation in order to provide a smoooth process for resolving requests. This legislation assumes that the failure of the museum to conduct such an exhaustive and costly undertaking in six months indicates a failure on the part of the museum to cooperate in the resolution of a request.

The documentation of museum collections is fundamental to the mission of museums. The provenance, history and significance of specific objects in museum collections are critical to the appreciation and understanding by the public of the cultures of specific societies throughout the history of the world. The tightening of museums' budgets, through the loss of incentives for charitable giving, the turbulence of financial markets, and the decline of federal support to museums are seriously constraining museums' ability to maintain this documentation and many other critical functions.

If the commission determines that an object should be returned to the requesting tribal government in sec. 16, the order of the commission shall provide for the preservation, scientific analysis and study of objects, provided that such conditions are compatible with the religious and cultural views of the tribe. This could be complex, costly and controversial. We understand the sensitivity of selected materials to Native Americans and their interests in regaining cultural materials. However, we believe that the legislation should not ignore the Native American, nor the general public's cultural and scientific interest in all archaeological and anthropological materials and should not provide any group, including tribal governments, with the exclusive blanket authority to prevent those judgements about preservation, analysis and study of cultural artifacts serving the public good.

Section 11(a) provides for the intervention of the commission, 120 days after the filing of a claim, when such efforts to achieve a negotiated settlement are then considered failed. We believe the amount of time necessary for documentation and negotiation may frequently far exceed these arbitrary limitations. Sincere and cooperative efforts to determine the provenance, ownership and preservation needs of materials by museums and

Native American communities have frequently and of absolute necessity taken much longer than six or nine months - and in some instances several years - to be accomplished.

We are also concerned that no provision is included in the substitute amendment for just compensation to museums for the years of care and conservation of legally and ethically obtained Native American materials, and for the possible loss of historically significant objects, many entrusted by Native American peoples themselves, from museum collections. We believe this may raise serious constitutional questions as to the taking of property without just compensation and due process for legally acquired materials. We believe that museums have played a singularly critical role in the preservation of the artifacts, traditions and cultures of Native Americans and other ethnic groups throughout the world. This legislation ignores such contribution by the museum community and would provide no compensatory relief to museums for the loss of materials from their collections and the expense of care provided over the years for these objects.

We also believe that museum trustees, with legal, fiduciary and ethical responsibilities to the collections of the institutions which they govern, would be open to legal suits on behalf of donors of Native American artifacts who placed such objects in trust to museums. This legislation would cause undue harm to these volunteers who give willingly of their time, knowledge and leadership in the management of museums.

As we stated in our testimony to the Select Committee last year, we strongly support the general intent of S. 187, to respect the needs and interests of the Native American community, their culture and traditions. Yet we believe that the Native American Museum Claims Commission Act is not the answer. Its retains the creation of a federal adjudicatory body; a need for which has not been either proven or concurred in by the majority of the tribal governments. We believe that rather than enact federal legislation, the issue of repatriation of Native American artifacts and remains from museum collections is best resolved on a case-by-case basis through direct negotiations on the local level between the principal parties involved. This method, we believe, is fair and efficient and will lead us to our shared goals.

Cultural distinctiveness and religious integrity will not be realized through this proposed federal legislation. Indeed, we believe it might seriously endanger current cooperative efforts which are proving to be positive forces in improving relations between Indian people, museums and the museum-going public. The answer instead could come out of a federally promoted program which would capture the momentum, enthusiasm, conviction and commitment shown by so many, including the AAM, the museum community, professional groups in the sciences of anthropology, archaeology, ethnology, and museology to sensibly, creatively, and responsibly work together with the Native Americans on the social and moral responsibilities of our museums which serve as voices of all American constituencies.

Let me propose to you, Mr. Chairman, to Senator Melcher, to the entire Select Committee, and the constituency of Native American voice, that we enter into an immediate and intense year-long dialogue on the identification, use, care, and ownership of Native American materials. I have discussed this idea with the renowned School of American Research in Sante Fe, New Mexico, and they have offered their facilities and resources to create the forum for such incredibly important research and discussion which will result in the development of an initiative appropriate to the future integrity and legacy of American museums, as well as Native American cultures.

We thank the Select Committee for the opportunity to testify and offer our support and assistance in your continuing deliberations on this critical issue.

AMERICAN ASSOCIATION OF MUSEUMS

POLICY REGARDING THE REPATRIATION OF NATIVE AMERICAN CEREMONIAL OBJECTS AND HUMAN REMAINS

The contribution of Native Americans to the development of American society has been profound and has continuing influence on American life and culture. Museums too have contributed significantly to the development of American society. Museums have played an important role in the preservation of the rich and diverse culture of Native Americans. Through their collections, exhibitions and programs, museums have helped to underscore the inherent value and integrity of Native American culture and Native Americans' place as America's first inhabitants. Together with the Native American community, museums are helping to assure the survival of Native Americans' values, ideas and traditions into the twenty-first century and beyond.

Museums with Native American collections have a special responsibility to these collections in their preservation and use. These collections are often central to the understanding of Native American culture and to the preservation of the living heritage of the Native American. To fulfill this responsibility, museums should make their Native American collections readily accessible to the Native American community; reflect Native American values and traditions in the care and interpretation of these collections; and regularly involve Native Americans in museum programs concerning these collections. As part of this responsibility, museums should also seek the collaborative resolution of requests for the repatriation of human remains and ceremonial materials in their Native American collections.

The resolution of requests for repatriation is best accomplished on a case-by-case basis. Only by a case-by-case approach can proper consideration be given to the diversity of specific native communities and the ethical, fiduciary and legal responsibilities of individual museums.

As institutions devoted to collections of artistic, historic, and scientific objects, museums are ultimately responsible for the proper care and interpretation of their collections, including those of Native American origin. Sensitivity and respect for the meaning and value of such material must be realized within the context of the museum's mission to preserve, interpret and exhibit its collections.

In their responsibility to collections, museums should consider the changes in professional museum standards and practices through time. Many individual collectors, acting on behalf of museums, or museums acting on their own behalf, engaged in activities in the past that were aimed at assuring the preservation of elements of Native American culture and traditions that may not be considered ethical by today's standards. Museums are now faced with making difficult decisions regarding the relationship between the ethics of the past and the ethics of today.

The Policy on Repatriation of Native American Ceremonial Objects and Human Remains was adopted by the Council of the American Association of Museums, January 15, 1988.

In determination of requests for the repatriation of Native American materials, the ethics of today must prevail over the ethics of the past. Museums should act in accordance with current museum standards and practices in the acquisition, research, interpretation and deaccessioning of Native American collections.

The return of materials from museum collections to indigenous populations is both a domestic and an international issue. This policy statement, however, is not intended to apply to the international issue of repose for cultural property. The repatriation of Native American materials involves a unique set of legal issues and domestic considerations. This statement speaks only to the issue of repatriation of Native American ceremonial objects and human remains in the United States.

This policy addresses two separate and distinct types of collections: ceremonial objects and human remains.

CEREMONIAL OBJECTS

Ceremonial objects are those for which it can be demonstrated that the individual object is necessary to assure the continuation of the religious practices of a Native American group with both legal and cultural standing. Native Americans with a legitimate right to request repatriation are members of Native American groups claiming relation to the object and with legal and cultural standing.

A museum which possesses illegally acquired Native American ceremonial objects should repatriate those objects if requested to do so by Native Americans as previously defined. In negotiations to repatriate Native American ceremonial objects, museums should take the steps necessary to ensure that all parties address the issue of the preservation, when appropriate, of such objects.

In cases where the methods of acquisition of objects may have been technically legal at the time of acquisition but which may be considered unethical by standards either then or by standards since, museums should weigh both legal and ethical considerations when considering requests for repatriation. Museums should also weigh the value and benefit of such objects to their public mission with the interests of the requesting party. The specifics of all these considerations should be discussed with the legitimate groups.

For objects that have been legally and ethically acquired, museums should also give serious consideration to requests for repatriation. In such instances, the museum should weigh and balance the value and benefit of such objects to its public mission and purpose with the value and benefit of such objects to requesting Native American parties before making decisions. Thorough discussion between the museum and the requesting party is important to this process. In general, museums should be satisfied that the reasons for request of repatriation are more compelling than the reasons for retaining ownership of such objects. Museums should determine the legal conditions and potential liability of any deaccession for repatriation and act in accordance with the highest standards of well formulated collections policies.

(It is understood that "grave goods" may be different from ceremonial objects. However, in the examination of requests for repatriation, museums should consider this policy's treatment of ceremonial objects appropriate for repatriation requests of Native American grave goods).

HUMAN REMAINS

Museums which possess illegally acquired human remains should take steps to repatriate such remains upon request of the legitimate party concerned.

In cases where the methods of acquisition of remains may have been technically legal at the time of acquisition but which may have been unethical by standards either then or by standards since, museums should weigh both legal and ethical considerations when considering requests for repatriation and discuss with the requesting parties the specifics of these considerations.

Museums should weigh scientific interests with principles of Native American religion and culture and specifically demonstrate the existence of more compelling scientific interests if they are to retain historically recent (post-European contact) remains for which there is a direct relationship to existing Native American tribes, individuals or families.

Upon receiving a request for the return of human remains from the pre-European contact era and for which there exists a direct antecedent to specific Native American individuals, families, or groups, museums have a responsibility to weigh equally scientific values with Native American cultural values and basic human dignity. Unless there are compelling and overriding reasons to retain human remains under these conditions, museums should work with legitimate Native American descendants to return such remains.

For remains of both the pre- and post-European contact eras that lack such direct connections to existing individuals, families or tribes, Native Americans who request repatriation must demonstrate that there exist compelling religious or cultural values that transcend well established scientific interests on the part of museums in order for repatriation to occur. Museums should consider such requests for repatriation seriously and in good faith.

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Statement of the Society for American Archaeology
Before the Senate Select Committee on Indian Affairs
on The Native American Museum Claims Commission Act,
a Substitute for S. 187,
The Native American Cultural Preservation Act

July 29, 1988

Presented by

Cheryl Ann Munson
Chairman, Governmental Affairs Committee

Mr. Chairman, the Society for American Archaeology (SAA) is an international association comprised of both professional and avocational archaeologists concerned about the discovery, interpretation, and protection of the archaeological heritage of America. As such, the Society and its members have long-standing relationships with many federal and state agencies, Native American tribes, and museums on our common goals: to preserve, study, and promote the nation's cultural past for present and future generations. The Society acknowledges and respects the diversity of beliefs about, and interests in, the past and its material remains, and it is committed to understanding and communicating the richness of the cultural heritage of the United States.

We appreciate the opportunity to testify today on the Native American Museum Claims Commission Act. This legislation has been offered by Senator John Melcher as a substitute for S. 187, the Native American Cultural Preservation Act, to create a federal vehicle to resolve disputes between Native Americans and museums concerning the collections of human remains, grave goods, and/or ceremonial objects. Museums are defined as public and private institutions, including those at universities and within federal, state, and local agencies. A board of three commissioners would be empowered to make decisions about the rights of museums to curate Native American ceremonial objects or to curate human remains and grave goods obtained from lands on which Indian tribes, Native Hawaiian groups, or their ancestors had interred such human remains and grave goods.

Archaeology's Contribution to Knowledge

Archaeology's contribution to the understanding of the prehistory and history of America is both unique and indispensable. It ranges from research about the peopling of the American continent over 12 thousand years ago, to studies of the development of Native American cultures such as those responsible for the cliff dwellings at Mesa Verde and the mounds of the Ohio River Valley, to a fuller picture of the first European settlements and our country's struggle for independence, to investigations that reveal pre-and post-Civil War lifeways of plantation owners, farmers, slaves and freemen in the South.

An accurate interpretation of the past depends on archaeological resources as well as written sources. Thus the study of archaeological remains is essential to an understanding of the history of the United States and its people. In the case of archaeology, the past is manifest in the tangible material remains of our cultural heritage. Much of the heritage of this country, and certainly its prehistory and early history, is represented solely by archaeological remains.

The tangible remains of past cultures include artifacts, plant and animal residues and structural features, as well as, human remains. From the remains of everyday living and the dating of archaeological sites, past cultures are reconstructed and sequences of social, political, and economic development are brought to light. Most archaeological studies are devoted to the peoples of the past whose accomplishments are not the subject of history books, either because the peoples predate written accounts or were considered to be of little consequence to scribes and writers. In this way, archaeological research provides a voice for peoples and cultures who would otherwise be silent, yet whose stories enrich our understanding of humanity.

The study of human remains is an integral part of knowledge about many aspects of the past that cannot be ~~derived~~ obtained from other sources of information.

- The age, sex, injuries and other physical attributes of human remains contribute to analyses of the social dimensions associated with individuals, allowing us to understand the customs and values of past societies in ways that cannot be derived from studies of architecture or tools.

- Studies of genetic markers in the human skeleton permit the reconstruction of marriage systems, of migrations, and of ancestor-descendent relationships among past populations. Without the information derived from skeletal remains the relationships among many past cultures would be little more than unlinked reconstructions of the styles of buildings and equipment, a materialist rather than human prehistory.

- Analyses of human bone tissue allow dietary elements to be measured and related to the health, economics, and social organization of past populations. Such direct assessments of ancient diets are otherwise not possible.

Studies of ancient human remains also provide significant sources of information about the epidemiology of diseases and modern health conditions. For example:

- Skeletons of medieval British monks have no evidence of rheumatoid arthritis, but this diseased recently has been found in prehistoric American Indians. These findings strongly suggest that this disease is caused by an infectious agent that was transmitted from the Americas to Europe after 1492.

- Evaluation of background levels of chemical elements is made possible by studies of past human populations. One study of 17th century Hopi Indian remains and the milk teeth contributed by modern Hopi children showed much higher levels of lead in the modern teeth. These results point to the pollution of the Hopi environment within the last three centuries.

- Questions about the role of tuberculosis in American Indian health were addressed by studies that examined the distribution of this disease in ancient and historic populations. This disease was recognizable in both historic and prehistoric populations, but in the prehistoric era occurred only in later periods which had aggregated populations and not in earlier periods when population densities were low.

Knowledge about past populations, their health and cultures can grow only from scientifically collected and curated archaeological remains from which observations and measurements can be made and replicated. For human remains, many of the significant contributions to archaeology and human biology derive from the application of new chemical and physical techniques.

The field of inquiry is rapidly developing, and innovative methods are being used in restudies of existing collections, both to reach new conclusions and to alter previous interpretations (see Buikstra and Gordon 1981*). Thus, the scientific value of human remains, both for the present and the future, resides in the careful and thoughtful maintenance of large collections of human remains from all time periods and from varied geographic areas. For these reasons, the Society opposes universal or indiscriminate repatriation or reburial of human remains, either from ongoing excavations or from extant collections.

The scientific excavation, curation and study of human remains is an important part of understanding the human past. Museums and archaeologists throughout the world share the responsibilities for these activities. In this country, the curation and study of human remains are essential to increasing the public's knowledge of Native American accomplishments, given the many thousands of years of cultural variation and change that took place prior to the historic era.

Without museum collections, scientific studies could not have shattered the racist myth of the Mound Builders -- the false notion that the ancient earthen mounds of the Ohio River Valley and elsewhere were the works of some ancient super-race, rather than prehistoric American Indians. Without museum collections archaeologists could not enlighten people about the rich and varied cultural expressions of Native Americans that preceded the arrival of Europeans on this continent. These are exemplified by the proto-urban centers at Chaco Canyon National Monument in New Mexico and at Cahokia in Illinois and Missouri, the prehistoric art of Northwest Coast Indians, the ancient irrigation systems of southern Arizona, to name only a few.

Issues and Positions

Over the past several decades, the Society has sought to clarify values and principles inherent in the scholarly study of human remains. This is reflected in numerous meetings of the Society's leaders with representatives of pan-Indian organizations. One important result of meetings and conferences has been reiteration of the range of scholarly, political, cultural, and human issues that are involved. These issues (copy attached) need to be fully addressed whenever policies are considered about the disposition of human remains.

* Jane E. Buikstra and Claire C. Gordon
1981 "The Study and Restudy of Human Skeletal Series: The Importance of Long-Term Curation." In: The Research Potential of Anthropological Museum Collections, edited by Anne-Marie E. Cantwell, James B. Griffin, and Nan A. Rothschild. Annals of the New York Academy of Sciences, Volume 376, pp. 449-465.

Another result of the Society's endeavors has been increased recognition of the diversity among cultural groups -- and even within cultural groups -- of definitions of appropriate ways to treat the dead. This diversity is evident among past and present Native American cultures. Among some peoples human burials were placed in mounds, among some in cairns, and among others in earthen graves. Still other groups held that burial in earth defiles the earth. In some past and present groups cremation is the acceptable way to treat human remains.

Only when human remains can be shown to have a direct lineal relationship to individuals or groups whose practices are known can the concept of what is proper to the particular culture be surmised. It is in such situations that remains can be treated in a manner that is responsible to the cultural and religious values of both the deceased and the living.

The Society believes that disputes about the treatment of human remains are best resolved at the local level, on a case-by-case basis. Such a mechanism both insures that the appropriate parties are identified and consulted and honors the diversity of interests and concerns to a degree simply not possible under a national policy. By retaining the right to resolve disputes within local communities, balance can be achieved between legal issues and the legitimate concerns of scientists and the living peoples who have a clear relationship to the remains. As the Society has stated:

- Scientific values of particular human remains are determined by the potential to aid in present and future research.

- The legitimacy accorded any claim to human remains by individuals or groups depends upon the strength of demonstrated biological or cultural affinity with the remains. If remains can be identified as those of an individual from whom specific biological descendants can be traced, the disposition of those remains, including possible reburial, should be determined by the closest living relatives.

Archaeologists know that not all human remains are worthy of study and curation. Some have no scientific value, and in these cases repatriation and reburial can be acceptable. In other cases, direct lineal relationships between living peoples and human remains override scholarly concerns, and thus the wishes of the descendants take precedence over the potential for long-term scientific study. The mission site of El Presidio, California, is one example; after consultation, excavation and careful study, the wishes of the living guided the reinterment of human remains.

In situations where human remains cannot be directly linked to living individuals or groups, scholarly values should have precedence. To rebury such remains after a single period of study precludes future study and presumes that scientists are somehow omnipotent -- that the significance of the remains can be learned by current methods, that no new questions will arise about past cultures and the genetic relationships of their bearers, that no comparisons will ever need be made to understand the courses of disease, nutritional constituents, or pollutants.

In reality, when human remains are reburied after a one time period of study, the loss of knowledge is mitigated only to a small degree. A photograph, after all, cannot take the place of the original materials.

The Society supports the preservation of the nation's archaeological resources in order that the past can be illuminated for present and future generations. Archaeologists recognize, however, that the cultural heritage of our country cannot always be preserved in the ground. Archaeological studies and curation of evidence of that heritage is then necessary. When human remains are recovered as part of the archaeological study and these are unlinked to living peoples or groups, then it is the obligation of scientists and museums to study and conserve these remains in a way that can tell us -- and tell the people of tomorrow -- about the significance of past cultures and the health and lives of the peoples who once lived in this country.

Conclusions

Knowledge of the nation's heritage and the opportunity to increase public comprehension of the accomplishments and richness of Native American cultures depends on scientific study of archaeological remains and the maintenance of collections for long-term research. Only in this manner is it possible for the scientific values of artifacts and ancient human remains to reveal what they can about past cultures and peoples. Only with careful documentation and curation can new questions about prehistory and early history be answered in studies or restudies of collections. And only in this way can the suite of rapidly developing chemical and physical techniques reveal new information on human health and its changes through time.

The Society recognizes both scientific and traditional Native American interests in human remains, but the proposed legislation assumes that there is an adversarial relationship between archaeologists, museum specialists, other professionals and Native Americans. This is not the case. Archaeologists throughout the country deal daily with Native Americans successfully on these issues.

The question thus arises -- Do we need a new federal authority to take care of issues that are being managed at state and local levels?

Indeed, there are other more pressing concerns ~~of~~ shared by archaeologists, museums and native peoples that deserve the Committee's attention, and they are not addressed in the proposed legislation. Following are a few:

- Support for Native American museums should be greatly enhanced, and training in museum work should be provided for native peoples.

- Better enforcement is needed of existing legislation, such as the American Indian Religious Freedom Act (AIRFA) and the Archaeological Resources Protection Act (ARPA), to halt damage to sacred places and to stem the rampant looting of archaeological sites.

- More educational programs are required to increase the public's knowledge and respect for the thousands of years of Native American cultural achievement that are represented by archaeological sites and cared for in museum collections.

Federal support for these endeavors would foster coordination and cooperation among archaeologists, museums and Native Americans.

In summary, the Society believes that human remains must at all times be treated with respect. When recovered or curated, they should be accessible only for responsible scholarly or educational purposes. Commercial exploitation of ancient human remains and grave goods is abhorrent. The proper disposition of human remains must attend to both scholarly concerns and the wishes of the living who have a demonstrated relationship to the remains. If conflicting claims arise, resolution is best achieved at the local level by consideration of traditional values, scholarly values, and the affinities of groups and living persons to human remains from archaeological contexts.

Thank you.

ISSUES CONCERNING THE TREATMENT OF HUMAN REMAINS

How may existing unmarked graves be protected from vandalism and casual destruction?
Under what circumstances, and by whom, might human burials justifiably be disturbed?
Who should be consulted about disturbed burials? (How might parties with special interests be identified, and whose interests are to be considered legitimate?)

Under what circumstances should reburial be mandatory?
Who should bear the responsibility and cost of mandated reburial?
Might reburial properly occur in mausoleums where ceremonies can take place and from whence skeletal materials might be temporarily removed for study?

How might standards be set and enforced for the responsible curation of human remains?
Should extant collections ever be reburied?
Should human remains ever be publicly displayed? Privately owned? What might be reasonable circumstances, if any, for each?

How are the different attitudes and interests among the various ethnic groups comprising the population of the Americas to be accommodated in policies regarding treatment of human skeletal remains?
How are scientific values to be balanced against religious values?
Should current religious and political issues take precedence over likely future benefits of knowledge?
What are our responsibilities to the deceased, in terms of their potential contribution of knowledge to the living and to future generations, for mode of reburial, for choice of ceremonies when mandated, etc., as against the claims of the living?

What is the proper role of local communities, state governments and the federal government in establishing policies, standards, guidelines, or legal requirements regarding the treatment of unmarked human burials?

How might funds be made available to facilitate study and analysis of human remains at a level that equals the current state of the art?
How might information derived from study of human remains best be disseminated to the public?

Who may legitimately control knowledge or access to knowledge, for what purposes and for what constituencies?

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THE RESEARCH POTENTIAL OF ANTHROPOLOGICAL MUSEUM COLLECTIONS

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The Study and Restudy of Human Skeletal Series: The Importance of Long-Term Curation

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INTRODUCTION

In 1830, citing his need to educate introductory anatomy students about human cranial variation, Samuel Morton "resolved to make a collection" of skulls that represented the races of mankind.[1,2] Thus began the first significant American collection of human skeletal remains. By the time of Morton's death in 1852, this collection had burgeoned to include 918 crania, with 51 more in transit.[2]

Though the series was initially accumulated with educational motives in mind, it also served as a basis for Morton's researches, which were featured in such classics as *Crania Americana*,[3] *Crania Aegyptiaca*,[4] Squier and Davis' *Ancient Monuments of the Mississippi Valley*,[5] and in Henry Rowe Schoolcraft's ethnographic treatise concerning Indian tribes in the United States.[6] Morton *and* his collection thus initiated a significant tradition in American physical anthropology: the collection and study of human skeletal series to gain new knowledge about mankind. Though physical anthropology as a discipline has grown and diversified remarkably over the past 150 years, our heritage unquestionably derives from these early comparative investigations of human skeletal remains.

The significance of Morton's work rests primarily on the fact that his observations were made on such a large collection of crania.[7] This allowed comparisons impossible for earlier scholars such as Blumenbach, whose results were then said to be "invalidated by the small number of specimens relied upon . . ."[2] And, as might be expected, the accumulation of additional comparative skeletal samples *and* restudy of the original Morton collection using new observational strategies caused other researchers to call into question Morton's conclusions. For instance, in 1857 Daniel Wilson[8,9] noted that recently acquired samples from the Western hemisphere did not conform to Morton's definition of American cranial types. Wilson and colleages concluded that Morton's emphasis upon the fundamental unity of the American race had been overdrawn. New World types were said to be as varied as those of the Old World. J. Aitken Meigs, although initially in support of Morton's theories, also came to question the unity hypothesis. Given responsibility for osteological study of the Morton collection, Meigs[7] initiated a new (for the mid-1800s) observational strategy: detailed examination of the occipital bone. The results of this restudy led Meigs to conclusions distinctly different from those of Morton.[7]

This scenario is, of course, familiar to scholars from any field of scientific inquiry. New knowledge is gained through the refinement of prior models. As more comparative data become available, so do new techniques. An essential aspect of scientific methodology is reexamination of existing theories through the application of innovative research strategies and/or through the availability of an enriched data base. And so it happened in this example from 19th-century physical anthropology, as Morton's theory of racial unity was tested by later scholars and found wanting.

The importance of this illustration is that it underscores the fundamental relationship between availability of museum collections of human skeletal remains and the development of new knowledge in physical anthropology. Although the existence of such a relationship may seem intuitively obvious, the strength of this association remains to be explored. Certainly, other great American skeletal collections could have been cited in our example, including those of the Smithsonian, the American Museum of Natural History, and the Peabody Museum. These collections have served well the needs of generations of physical anthropologists and continue to be used today. In addition to the more familiar skeletal depositories mentioned above, hundreds of collections exist in museums and universities throughout the world. Although some attempts to catalogue human skeletal series on this continent have been completed,[10] none has explicitly examined the use and reuse of such collections in the generation of new scientific knowledge.

A major emphasis in this study is longevity of use for skeletal series.

We are all aware that the objectives for collecting osteological materials have changed since Morton's time: from skulls to total recoverable elements; from "representative" adult skeletons to total cemetery samples. Even so, it would be premature to conclude that the older series are not useful in the development of new knowledge. The importance of these older collections requires careful scrutiny, particularly in view of the current disquieting trend toward reburial of human skeletal remains. We will attempt here to examine the pattern of use for the older collections, as well as that for those more recently acquired. In addition, we are concerned with the degree to which older series are important in the development and testing of techniques and methodologies that were not available at the time of collection acquisition.

Finally, we here attempt to quantify the frequency of restudy of existing museum collections, and their role in the reexamination and alteration of formerly accepted conclusions. These data should be important in assessing the usefulness of human skeletal collections to scientific inquiry, and the need for long-term curation of these series.

MATERIALS

To examine the role of museum collections in the generation of new scientific knowledge, we have defined our *new knowledge* data base as follows: the set of research articles published in the *American Journal of Physical Anthropology*, *American Antiquity*, and *Human Biology* between the years 1950 and 1980 inclusive. Only those articles in which the author physically consulted a museum collection of human remains are included in our sample. Thus reuse of data previously obtained for another project or published elsewhere did not merit inclusion. Similarly, articles referencing data obtained from dental casts and x-rays without assessing the collections *per se* were also excluded.

Utilizing the 310 articles thus defined, the following eight dimensions of variability were recorded for each study: (1) year of publication, (2) problem orientation, (3) number of collections observed, (4) collection names or numbers, (5) collection sizes, (6) collection acquisition dates, (7) whether the article is a restudy of any collection, and (8) whether the article utilizes analytical techniques not available at the time of collection acquisition. Though these details may seem fundamental, many articles lacked complete information. In such cases, every attempt was made to obtain the necessary data from original site reports or by contacting the author via telephone or mail.

Several attribute states for these variables require additional explanation. A summary of this information appears in TABLE 1. Problem orientation, for example, was recorded as either descriptive, technical, or investigative. Articles presenting raw data for a particular collection and/or comparing data values among several collections without explicitly referencing an explanatory hypothesis were coded as descriptive/comparative. Projects that accessed collections to illustrate or test a new analytical technique such as blood typing, aging, or sexing, were coded as technical. Research designed specifically to test an *a priori* hypothesis were coded as investigative. Our purpose in making these distinctions is to isolate the differences in collection use for gaining different types of knowledge.

The number of collections used for a given article is a particularly problematic variable, because the definition of "collection" can vary depending on the author's research problem. This is especially true for archaeologically derived skeletal series. For example, the Northwestern University skeletons might be referenced as a single collection of Lower Illinois Valley Amerindians when research focuses on regional variability. A second project might recognize the same skeletons as three separate, temporally defined, collections (Archaic, Woodland, and Mississippian) if biological change over time were the focus. Still a third article might recognize 10 or more separate collections, based on individual mounds or mound groupings for research emphasizing intraregional variablity in population structure.

TABLE 1

CODING FORMAT

Variable	Attribute States, As Coded
1. Year of publication	1950 . . . 1980
2. Problem orientation	descriptive; technical; investigative
3. Number of collections accessed	1 . . . n, by series
4. Collection names/numbers	recorded as given, not analyzed
5. Collection sizes	1-30; 30-100; 101-300; 301-1000; 1000+
6. Collection acquisition dates	most recent year of acquisition/maceration
7. Restudy	no; yes, new problem; yes, old problem—same conclusions; yes, old problem—new conclusions; old problem—conclusions unclear
8. New technique	yes; no

Recognizing these differences in collection definition, we have recorded all data at the *series* level. We here define series as the set of human remains from a single archaeological site or closely related sites (such as a mound group), housed in a single institution. Thus the Lower Illinois Valley Amerindians at Northwestern constitute a single collection with a number of series included: Gibson, Ledders, and Koster, for example. Practically speaking, this approach is still not appropriate to the few articles that reference temporally defined series for which individual proveniences have either been lost or were unavailable to us. In these few instances, we have recorded each temporal-cultural unit as a separate series, recognizing that this will cause us to slightly underestimate the actual number of series investigated in some research projects.

Collection size was recorded for each series utilized. Since precise individual counts are very difficult to obtain, this variable was coded as follows: (1) fewer than 30 individuals, (2) 30–100 individuals, (3) 101–300 individuals, (4) 301–1000 individuals, (5) more than 1000 individuals.

Exact acquisition dates were also difficult to estimate, and most series required more than one year to collect. For the purposes of this study, we have used the last year of the acquisition interval as the relevant value. Thus a series excavated or macerated between 1954 and 1959 would have a 1959 acquisition date. If an article was published before collection was complete, the acquisition date for that particular sample was recorded as one year less than the publication date. The choice of analysis at the series level is particularly important to this variable, since large skeletal collections may have a number of series acquired at quite different times.

Finally, the attribute *restudy* was also coded in several variables states. A series is restudied by recording data classes previously collected by someone else. This may be for a new research problem, or an old problem may be restudied. When an old problem was reinvestigated, the results were coded as either confirmation or rejection of previous conclusions. Thus *restudy* has the following values: (1) no; (2) yes, new problem; (3) yes, old problem and new conclusions; (4) yes, old problem and same conclusions; and (5) yes, old problem with conclusions unclear.

METHODS OF DATA ANALYSIS

Using the eight variables defined above, four aspects of collection use were investigated: (1) longevity of collection use, (2) restudy of older collections, (3) utilization of multiple collections for comparative data, and (4) size of collections and frequency of their use.

LONGEVITY

Three approaches were used to investigate collection longevity. For a general impression of collection use in the last 30 years, we have generated a bivariate scattergram[11] of publication year against acquisition year for each series included in our sample. This strategy is used to answer the question of whether older collections are still in frequent use.

To see how these older series are being used, we have utilized a cross-tabulation table[11] showing the frequency of collection use for each type of problem orientation by the collection's age at the time of use. To do this, we defined a new variable, *Age*, by subtracting acquisition year from publication year. This table should clearly answer the question of whether older collections are being used in the problem-oriented, population-based research of the last 30 years. In addition, the role of older collections in the development and testing of new techniques can be assessed from this table.

COLLECTION REUSE

The frequency with which older series are restudied is of primary consideration in long-term curation planning. The frequency of reuse in this sample was investigated in several ways. Overall frequencies of reuse were generated using the SPSS program Frequencies.[11] This tabulation provides a measure of data recollection with new research problems in mind, and of the reinvestigation of prior conclusions. To see how long series continue to be reused, frequency of reuse by age of series was also calculated. This should indicate whether older series are considered valuable for the reinvestigation of biological/cultural theories.

The role of restudy was also considered for each type of problem orientation in our sample. A χ^2 test was used to assess the significance of any differences in restudy frequency between descriptive, technical, and investigative projects. These results should provide a general indication concerning what kind of scientific information can be expected through reuse of collections in long-term curation.

The development of new techniques figures prominently in the reuse and longevity of museum collections. This final aspect of reuse was investigated by examining the frequency with which our *restudy* series were analyzed using techniques not available at the time of their acquisition. Of particular scientific importance is the frequency of conclusion reversals and significant alterations when new techniques are applied to older series.

THE NEED FOR COMPARATIVE DATA

A third important aspect of long-term curation is the need for comparative data when new collections become available. The importance of comparative data to the generation of new scientific information was assessed by computing the mean number of series reported in each article. It was anticipated that the need for comparative data might vary with problem orientation. A Model I Analysis of Variance[11,12] was chosen to test this hypothesis. Preliminary tests, however, indicated that the *Number of Series* variable was not normally distributed. Thus a Kruskal-Wallis test[11,12] was substituted for the Anova. This procedure supplies the same statistical information as a single classification Anova, but without assumptions about the distribution of the dependent variable.[12]

Our choice to analyze these data at the series level becomes critical here, since there is a "convenience bias" introduced when many skeletal series spanning a long time interval are available in a single museum. The California Indian Collection at the University of California at Berkeley is a case in point. Authors without access to such a large, temporally complete collection would have to use several different collections in order to get the same amount of comparative data that one trip to the Lowie Museum could provide. By treating these large collections as groups of skeletal series, we have tried to avoid a convenience bias in our data.

COLLECTION SIZE

A final aspect of collection longevity and usefulness is size of the collection. Here we considered the relative importance of collection size to the development of new knowledge. To investigate this relationship, we again applied the SPSS program Frequencies to the variables *Size*, and used a χ^2 test of significance.[11] As restudy is a very important variable in assessing the value of long-term curation and the development of new knowledge, frequency of restudy by size of series was also tested for significance.

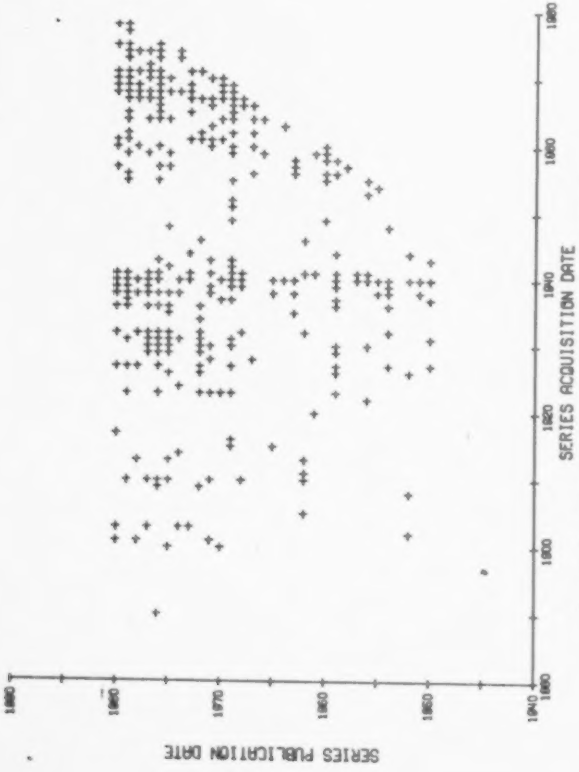

Figure 1. Bivariate scattergram of acquisition date vs. publication date.

RESULTS

LONGEVITY

Figure 1 is a bivariate scattergram of series acquisition dates plotted against publication dates for our sample. Clearly, older collections are still being used in recent research. In fact, use of series acquired before 1930 seems to have increased considerably in the 1970s. Although recent collections are obviously more frequently used, this is at least partially an artifact of sampling strategy. The 1950 starting date eliminates many articles based on older series that were published shortly after their acquisition.

The relative paucity of collections acquired between 1941 and 1955 is quite obvious in Figure 1. This is undoubtedly an effect of World War II and the Korean Conflict. It should be noted that many articles published during and shortly after this period were based upon data derived from war dead. Since these individuals were later returned to their families, and are therefore not *collections* as defined in this study, those projects were not included in our sample.

A frequency cross-tabulation of series age by problem orientation is presented in Table 2. Inspection of the column frequencies and total indicates that most collections referenced in the last 30 years were used for investigative problems ($\chi^2 = 139.46$, $p < .001$). This undoubtedly reflects both a recent trend in anthropological research, and an apparent preference for nondescriptive articles on the part of the three journals chosen. It is also clear that use of older series is not limited to descriptive and technical research. In fact, after the first 30 years of curation, investigative research is unquestionably the predominant reason for study-

Table 2

Frequency of Collection Use: Series Age by Problem Orientation

	Problem Orientation			
Series Age	Descriptive	Technical	Investigative	Row Totals
1-10 years	60	16	86	162
11-20 years	22	13	47	82
21-30 years	16	12	16	44
31-40 years	9	8	53	70
41-50 years	22	12	42	76
50+ years	8	5	29	42
Column Totals	137	66	273	476

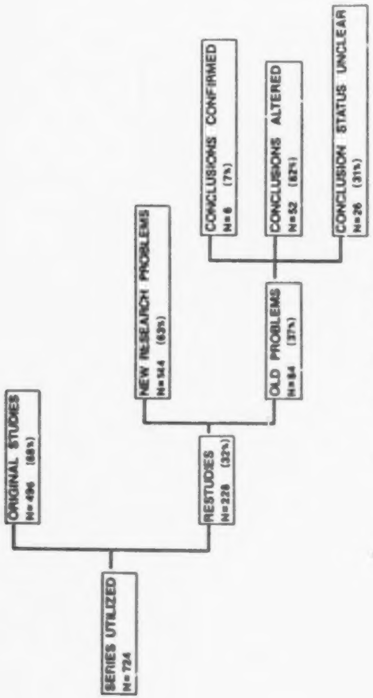

FIGURE 2. Restudy of skeletal series.

ing these series. Furthermore, series studied over 50 years after acquisition date contributed to 11% of all the investigative uses of museum collections in this sample.

The decline of descriptive use in relationship to age of series is not unexpected. It is probable that most descriptive articles referencing older collections would predate our 1950 starting date. Unlike descriptive and investigative uses, technical use of museum collections seems evenly represented in all age categories. This impression is supported by a χ^2 test which was not significant at the .05 level ($\chi^2 = 6.90$, df=5). Thus, older museum collections appear to be equally useful for technical research.

REUSE

Reuse of museum collections is summarized in FIGURE 2. Fully 32% of the cases in our sample involved re-collection of data. Of these 288 reinvestigations, 63% used the data for new research problems and 37% restudied the conclusions of earlier reports. When a research problem was reexamined, new conclusions were reached in 62% of the cases, and the status of 31% of the reinvestigation results was unclear. On the basis of this 62% reversal rate for conclusions, we can certainly support the notion that restudy of museum collections is important in the scientific development of knowledge.

Frequency of reuse by collection age and problem orientation is presented in TABLE 3. The row totals suggest museum collections of all ages were equally restudied. This idea is supported by a χ^2 test which was not significant at the .05 level ($\chi^2 = 10.1$, df=5). Although not statistically significant, the relatively higher reuse rate for collections

TABLE 3

REUSE OF MUSEUM COLLECTIONS: SERIES AGE BY PROBLEM ORIENTATION

	Problem Orientation			
Series Age	Descriptive	Technical	Investigative	Row Totals
0–10 years	4	3	16	23 (17%)
11–20 years	6	4	6	16 (12%)
21–30 years	8	4	9	21 (15%)
31–40 years	2	3	25	30 (22%)
41–50 years	12	5	14	31 (23%)
50+ years	3	1	11	15 (11%)
Column Totals	35 (26%)	20 (15%)	81 (59%)	136 (100%)

31–50 years old can probably be attributed to the disproportionate reuse of the Terry Collection (macerated 1910–1940), the Indian Knoll Series at the University of Kentucky (excavated 1939–1941), and the various Eskimo and Aleut series collected by Hrdlička, Collins and others that are housed at the Smithsonian (1926–1939).

A consideration of column totals in Table 3 suggests that most restudies were undertaken for investigative purposes. Investigative problems made up 59.6% of the restudies, with 25.7% descriptive, and 14.7% technical in focus. These differences are significant at the .001 level ($\chi^2=45.03$, df=2). In sum, reuse of series that are available for long-term study can be expected to figure prominently in the development of new scientific knowledge and particularly so in investigative research.

The development of new techniques (summarized in Fig. 3) is an important factor that should influence decisions made concerning long-term curation and maintenance of museum collections. In our sample, 25.8% of the skeletal series were studied using techniques not available at the time of acquisition. The application of new techniques is even more frequent in the series restudy subsample (see Fig. 3). Nearly half of the cases of series restudy (47.9%) utilized new techniques. When new techniques were applied to reinvestigations of old problems, new conclusions were reached in 73.7% of the cases. This startling figure clearly indicates that long-term curation of human remains is quite important in the development of new knowledge.

COMPARATIVE USE

The desirability of comparative series for scientific research is an important reason for a broad commitment to long-term curation of human skeletal remains. Fully 47% of the articles sampled here were based upon such comparative use. Descriptive statistics for the *Number of Series Used* variable are presented in Table 4. Articles in this sample utilized between one and 55 series. The mean number of series used was 3.2, but this figure varied broadly, resulting in a standard deviation of 5.2. In addition, the distribution of this variable is skewed to the right and is leptokurtic, with both statistics significant at the .001 level.

To understand better what types of scientific research are most benefited by multiple series use, we compared the number of series used across descriptive, technical, and investigative problem orientations. The results of this Kruskal-Wallis test are presented in Table 5. In-

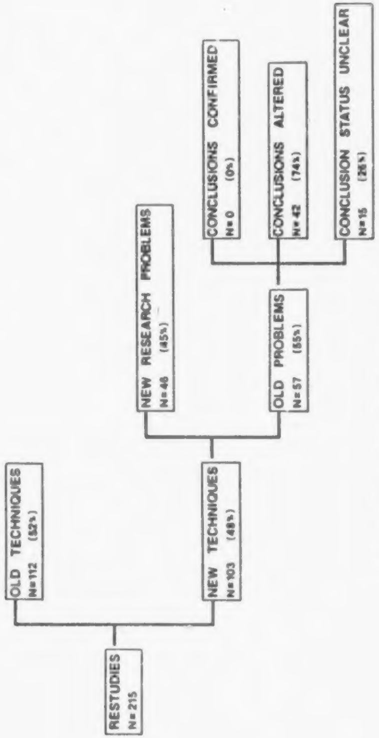

Figure 3. Applications of new techniques to skeletal research.

Table 4

Descriptive Statistics for Number of Series Used

Sample size	292
Missing cases	18
Minimum	1
Maximum	55
Mode	1
Mean	3.22
Standard of deviation	5.17
Coefficient of variation	160.8
Skewness (g^1)	5.48*
Kurtosis (g^2)	41.29*

* $p < .001$.

vestigative articles clearly use more comparative series than technical and descriptive articles, and this difference is significant at the .001 level. Thus, long-term curation can be expected to benefit all types of skeletal research by making comparative series available for study, but investigative research will be particularly enhanced by this.

COLLECTION SIZE AND FREQUENCY OF USE AND REUSE

Figure 4 illustrates the relationship between series size and frequency of use. As might be expected in a sample of post-1950 research projects, the larger series (101-1000) are the most frequently represented ($\chi^2=51.2$, $p < .001$). This is probably related to the development of population biology and the high-speed computer, which make large sample sizes both desirable and manageable in research. The lower fequency of very large series (1000+) is probably more a function of their scarcity than of lack of utility. Even though larger series are more frequently represented, collections numbering fewer than 100 still accounted for 26.5% of series use. Clearly, smaller series are contributing significantly to the development of new scientific knowledge.

Table 5

Kruskal-Wallis One-way Anova

Problem Orientation	N	Mean Ranks
Descriptive	102	123.35
Technical	49	123.95
Investigative	141	171.09

$\chi^2 = 27.3$; $p < .001$.

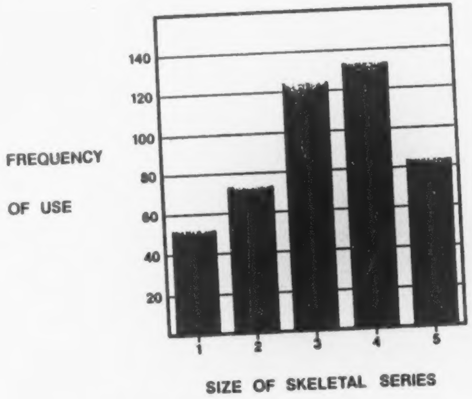

Figure 4. Frequency histogram: frequency of use by series size.

Restudy of collections by size is illustrated in Figure 5. While larger series experience a greater frequency of reuse ($\chi^2=34.4$, $<p$ .001), again small collections are significantly represented. Series numbering 100 or fewer accounted for 21% of the reinvestigations. This demonstrates that small samples, while perhaps not ideal for population-oriented research, are nonetheless contributing significantly to new insights concerning skeletal biology. The quality of future scientific research thus depends upon the inclusion of small series in plans for long-term curation of skeletal collections.

SUMMARY AND CONCLUSIONS

We have here investigated the relationship between long-term availability of human skeletal remains and the development of new knowledge in physical anthropology. Using studies published during the last 31 years in three North American journals, we have coded data that define collection size and acquisition dates, as well as the nature of the research pro-

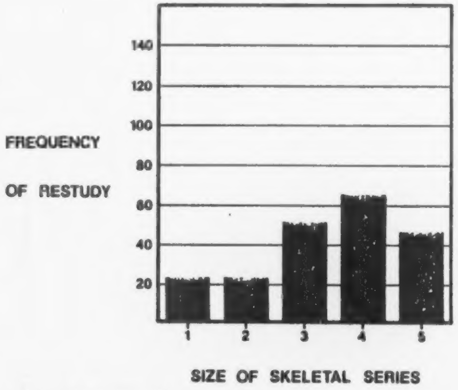

FIGURE 5. Frequency histogram: frequency of reuse by series size.

ject. Problem orientation and the reuse of collections received particular emphasis, as did the application and development of new analytical techniques.

Our data clearly support the notion that efforts made to conserve and store human skeletal collections are beneficial to the development of scientific knowledge. Older collections *are* being used, particularly in problem-oriented, investigative research. The fact that replicability and validation, crucial concepts in all scientific inquiry, require long-term availability is further reinforced by our research results, which indicate that restudy of collections often produces significant modification of previously accepted conclusions. This trend is particularly prominent when the results of prior inquiries are examined using new analytical techniques. Recent investigative problem-oriented research has been considerably enhanced by the presence of collections accessioned 50 or more years ago. These older series are also frequently used in the development of new techniques, and in comparisons with more recently collected samples. And, even though the larger series figure prominently in recent studies, it is important to note that collections numbering fewer than 100 individuals are commonly used both in initial investigations and in the restudy of contemporary hypotheses.

This research effort was initiated as a means of exploring the relationship between recent anthropological studies and the use of older collections of human remains. The goal was to provide information that would be useful to individuals who plan curation strategies. Our results clearly indicate that the present generation of scholars has benefited significantly from the considerable efforts made by workers who have—since Morton's time—systematically collected and curated human remains. It is our responsibility to ensure that future generations of scholars are allowed a similar privilege.

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The Morning Star

NORTHERN CHEYENNE TRIBE
INCORPORATED

P.O. Box 128
LAME DEER, MONTANA 59043

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The Morning Star

July 25, 1988

Senator John Melcher of Montana
Senate Select Committee on Indian Affairs
Washington, D.C.

Dear Senator Melcher:

This letter will introduce to you Guy W. Parker who is hereby authorized to represent the Northern Cheyenne Tribe concerning Senate Bill 187 and other matters relative to vocational training.

This letter will also authorize Mr. Parker as a nominee for the Dog Soldier Society to return with the pipe which belongs to the Dog Soldier Society and now is at the Smithsonian Institute in Washington, D.C.

It is our sincere desire to have this item which is crucial to tribal wellbeing returned to us. You will find the signature of the Hereditary Chiefs of the Dog Soldier Society affixed to this document as well.

Since this pipe has now been made the center of political considerations these men are not comfortable in engaging in any controversy which may arise. They have carefully and extensively backgrounded Mr. Parker on traditional information in respect to the pipe. He is prepared to respond to any questions relative to the pipe up to a certain point of discretion in respect to the most intimate details of spiritual concern.

We have tried through Mr. Bill Tallbull under direction of the Dog Soldier Hereditary Chiefs to offer far more in respect to enriching the knowledge of Smithsonian officials through intermediaries of the Montana Historical Society than should be necessary as you can discern from the attached letter.

LITTLE WOLF AND MORNING STAR - Out of defeat and exile they led us back to Montana and won our Cheyenne homeland that we will keep forever.

It is unfortunate that they cannot take the word of our traditional people. That word would be sealed by the pipe itself should they at least return it or allow Mr. Parker to bring it back on August 3, 1988, as his flight leaves at 4:00 PM from National Airport.

In respect to their mandate Smithsonian has much to gain from the quiet, non-controversial return of this pipe as regards antiquity which can be shared with all.

To us, this pipe is a main consideration of our continued traditional growth and wellbeing. Much tragedy has befallen us of late. This pipe would allow us to regain our sense of unity and spiritual purpose and could begin a new era of positive commitment of the Tribe.

Sincerely,

Robert Bailey, President
Northern Cheyenne Tribe

Attest: Chiefs of the Dog Soldiers

SMITHSONIAN INSTITUTION
Washington, D.C. 20560
U.S.A.

June 29, 1988

Mr. Bill Tall Bull
Chairman
Northern Cheyenne Culture Committee
Dull Knife Memorial College
Box 98
Lame Deer, Montana 59043

Dear Mr. Tall Bull:

The staff of the Department of Anthropology of the Smithsonian Institution's National Museum of Natural History has completed its review of Smithsonian accession records, archival materials, and other relevant sources associated with the pipe that you have requested on behalf of the Northern Cheyenne Dog Soldier Society. The enclosed report summarizes the research, provides background information about General Meigs, who donated the pipe to the Smithsonian, and describes generally the battle at Summit Springs, in which Tall Bull was killed.

As the report makes clear, significant gaps exist in our information. Statements made by Tall Bull's wife, who was captured at the Summit Springs battle, suggest that this pipe belonged to Tall Bull. However, these statements alone are not adequate proof of the pipe's provenance. Even assuming that the pipe belonged to Tall Bull, it may have been personal property rather than communally owned by the Dog Soldier Society.

We have found little information about the practices of the Dog Soldier Society other than accounts that after the battle of Summit Springs in 1869 most of the Society members joined the Southern Cheyenne. The remaining Society members in the Northern Cheyenne were reportedly absorbed into the Crazy Dog Society. If true, it is unclear to us whether the Dog Soldier Society of which you are now a member is the same Society as existed prior to 1869 or is a new entity. It is important for us to answer these questions before we can consider further your request for the pipe. Therefore, we invite you to share with us any information you might have that traces the history of the Dog Soldier Society within the Northern Cheyenne and demonstrates the manner in which the pipe is essential to the Society's religious practices. If, in fact, the Dog Soldier Society has been in existence in the Northern Cheyenne continually, it would help us to know how the loss of the pipe in 1869 has prevented religious practices since that time.

Another mystery surrounds the pipe. As was explained to you when you visited the Smithsonian and saw a photograph of the pipe, the red bowl attached to the stem in the photograph was not the bowl that belonged with the stem. The original bowl and stem appeared to have been separated many years ago. We now believe that we have located the original bowl based in part on an illustration of Tall Bull's pipe found in a book entitled Our Wild Indians, written by Colonel Richard Irving Dodge, and published in 1883. In the illustration, the bowl of the pipe is black, not red. Our research further indicates that pipes with black bowls were not used for ceremonial purposes, so the evidence raises a question about the pipe's use for religious practices. Here, too, we hope that you can explain this ambiguity.

Finally, we must caution you that even if all these questions are answered and it is established that the pipe is sacred and communal property of the Dog Soldier Society, it is unclear to us whether the proper claimant is the Northern Cheyenne or the Southern Cheyenne. To date, we have not received a request from the Southern Cheyenne for the pipe. Nevertheless, their potential interest in the Dog Soldier Society pipe would have to be explored before any final decisions could be made.

We regret that our information is not more conclusive. We are sorry, also, that we will be unable to accommodate your request to use the pipe in ceremonies on July first. Until these matters are resolved, it would be premature and possibly irresponsible for us to relinquish property that, because of its age and condition, could be damaged during the ceremony. Nonetheless, we are eager to resolve this matter and look forward to receiving additional information from you.

Sincerely,

Robert McC. Adams
Robert McC. Adams
Secretary

Enclosure

June 1988

RE: Tall Bull Pipe Background Research

Transmittal Documentation

The pipe under discussion has accession number 3208 and catalog number 13477. The Smithsonian Institution Annual Report for 1874 lists a donation from General M. C. Meigs of an "Indian pipe of the Dog tribe".

Documentation of the pipe is not extensive. There is a transmittal letter from M. C. Meigs dated 21 March 1874 to Joseph Henry with the accession records and a somewhat illegible label on the pipe itself. The transmittal letter says that the pipe was identified by Tall Bull's wife. As the letter relates Tall Bull was killed in the battle of Summit Springs and his wife captured.

The link between the Summit Springs battle 11 July 1869 to the possession of General Meigs and his donation in March 1874 is obscure. Meigs was not a participant in or present at the battle. Further, Meigs does not indicate from whom he obtained the pipe, when or where, hence the actual collector of the pipe and source of information about it is unknown.

A brief review of Incoming Correspondence in the Smithsonian

Institution Archives for Henry and Baird in the mid-1870s indicates that Meigs regularly corresponded with both. This makes sense since as Quartermaster General he would have been involved in organization of western expeditions and transport of material to and from western posts, good reasons for Henry and Baird to know him. But it also seems that he had an interest in natural history (which would include ethnology and archaeology at the time). For example, at least one letter to Baird concerned fish in the Columbia River.

Also, Meigs was a regular donor to the Museum. In Smithsonian Institution Annual Reports for 1873, 1874 and 1875 he is listed as having donated in addition to the pipe: buffalo-horn spoons from the Yellowstone, Indian implements from Arizona, skin and head of a mule-deer, Indian stone-chisel, collection of Cretaceous fossils from Heart River, specimen of *Terebratula* from Ingleton, Alabama, seeds of sujaro cactus from Arizona, pottery from Arizona, a fresh wapiti skin, and geological specimens from Indian Territory. Now, he probably did not personally collect all of these things, but he evidently was not confined to a Washington office either.

The published biography of M. C. Meigs (Weigley 1959) describes his life before the Civil War and his participation during the war as Quartermaster General in considerable detail, but gives scant attention to his career and interests later in life. He did become acquainted with Joseph Henry and others with scientific interests when he first came to Washington in the 1850s. After the Civil War he made trips to the west in the winters of 1871-72, 1872-73, and 1873-74 (Weigley 1959:354).

A logical supposition is that some acquaintance knowing of his interests simply gave or sent the pipe to him. A further conjecture is that he could have obtained the pipe from someone at one of the Plains military posts during the trip to the west coast in 1873-74. Actual participants in the 1869 battle may well still have been stationed at western posts which he may have visited. Note that the pipe was donated in March 1874.

In sum, Meigs' identification of the pipe may be correct, but no documentation has been found to evaluate or confirm it.

Documentation of Summit Springs Battle

In response to extensive raiding of white settlements in Kansas, General E. A. Carr's troops and contingent of Pawnee scouts attacked the Dog Soldier band under Tall Bull's leadership at Summit Springs 11 July 1869. Summit Springs was recognized as a decisive battle at the time, but contemporary documentation is scanty. Unfortunately, there does not seem to be a really definitive published account by a participant. No account seems to be free of retrospective embellishment or additions of information not actually known during the event. The following references were consulted.

There are three primary published accounts essentially from the perspective of Grinnell and the brothers Frank and Luther North in "Man of the Plains" (Danker 1961), "The Fighting Cheyennes" (1915) and "Two Great Scouts" (1928). Luther North's recollections written at Grinnell's urging were completed in 1925 (Danker 1961:xiii) but not published until much later. Clearly, Grinnell must have depended upon Luther North's recollections extensively for "Two Great Scouts" and "The Fighting Cheyennes". Grinnell had access to the recollections of Indian participants in the battle, but Cheyenne informants would have been available to Grinnell only years after the battle. Furthermore, if the North account is assumed to be essentially correct no Cheyenne other than Tall Bull's wife would probably have been able to corroborate their account of Tall Bull's final stand in the battle.

Frank North's diary has also been published (Danker 1958). It is very brief and provides no corroboration of the above accounts.

General Carr's manuscript report has been extensively cited in secondary published accounts of the battle (eg. King 1960 and 1963). Apparently the full text of this report has not been published. It is brief, only about 10 manuscript pages.

There are contemporary newspaper reports. One examined is published in the 15 July 1869 New York Times based on a telegraphic dispatch from Omaha.

Finally, another primary source is a letter written by J. E. Welch long after the event in Brady (1904). This brief statement is of uncertain creditability and accuracy.

Descriptions of the Summit Springs Battle

Extensive raiding in central Kansas earlier in 1869 had been attributed to the Dog Soldier band under Tall Bull's leadership. Naturally, the killing of Tall Bull would be a central event in any description of the battle, but the circumstances are plagued with inconsistencies and controversy. One reason for confusion is that apparently it was not immediately known that Tall Bull had been killed.

William F. Cody, Frank North and George Mason are all credited with having killed Tall Bull. The North brothers are at least given the best published description by George Grinnell. Grinnell knew them both. He met Frank North in 1870 as part of the military escort for O. C. Marsh's fossil collecting trip. He met Luther North in 1872 and they remained friends for life. Even so, it is unclear to what extent the account is based on recollection long afterward.

Grinnell knew Cody as well and gives no credit to Cody at all. Apparently re-enactment of the battle was featured in Cody's Wild West show. (There are other writers more sympathetic to the Cody claim).

The only published account found of Mason's actions appears to be Brady (1904). The J. E. Welch letter simply says Tall Bull was killed by Lt. Mason. The Mason involvement would be of little concern except that in the transmittal letter Meigs specifically credits Lt. Mason and Sergeant McGrath for killing Tall Bull, hence possibly a clue to the source of Meigs' pipe and information. An uneasy possibility is that Meigs may have gratuitously added this detail to his transmittal letter from one or another of numerous newspaper and magazine accounts that appeared at the time.

Grinnell's accounts of the battle mention the capture (actually surrender) of Tall Bull's wife. Although Frank North could communicate by sign language, the fact that Tall Bull had been killed was only established days later at Fort Sedgwick (apparently on 16 July according to Frank North's diary) after an interview by an interpreter.

With all this said, Frank North's laconic diary says nothing about Tall Bull and gives no actual account of battle itself.

The brief New York Times account on 15 July 1869 significantly does not mention that Tall Bull had been killed, but does mention the capture of his wife and daughter. In addition, it also reports the capture of several "chiefs" including one called "Good Bear". Grinnell (1915) mentions a Dog Soldier called Good Bear, although not in connection with the Summit Springs Battle.

General Carr's report to General Ruggles is dated 25 July (the battle was 11 July) and clearly would have retrospective advantage of interviews with captives. Only one paragraph relates to Tall Bull, which may have been based on an interview with Tall Bull's wife from the way it is written:

"Tall Bull, the chief, finding how matters were going, determined to die. He had a little daughter on his horse and one of his wives on another. He gave the daughter to his wife, and told her to escape and take the white woman who was prisoner, and she might use her to make terms for herself when peace was made. The wife begged him to escape with her, but he shut his ears, killed his horse, and she soon saw him killed, fighting. She then surrendered and was saved with her daughter of eight, and brother of twelve years."

Carr's report continues without further comment about the circumstances, perhaps because no one other than Tall Bull's wife realized during the battle what had happened.

Attached to Carr's report is an inventory made of material captured. The purpose seems to have been to document stolen property found, and weapons and camp related equipment destroyed or confiscated, but the list includes moccasins, war shields and war bonnets. In addition, Grinnell's account (1928: 201) of the battle notes that "The village was very rich in fancy buckskin shirts and dresses with beadwork and colored porcupine quills worked into them." Thus, there appears to have been an abundance of native made artifacts present.

Summary

The documentation reviewed neither confirms or discredits the identification of the pipe based on statements made by M. C. Meigs in his transmittal letter. The history of the pipe from the battle of Summit Springs to M. C. Meigs' possession is unknown. The pipe is not actually mentioned in any of the primary accounts of the Summit Springs battle examined and likewise is not known to have actually been on Tall Bull's person. Nevertheless, the identification of the pipe could have been established subsequent to the battle by Tall Bull's wife as the M. C. Meigs transmittal letter states, even if not identified at the camp site.

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Montana Historical Society
225 North Roberts · Helena, Montana 59620-9990 · (406) 444-2694

June 9, 1988

Bill Merrill
Ethnographic Curator
Smithsonian Institution
1000 Jefferson Drive, S.W.
Washington, D.C. 20560

Dear Bill,

To follow up on your conversation with our curator, Chere Jiusto, last week, regarding Tall Bull's pipe, Bill Tallbull has been informed that your research documenting the pipe and its donation will be turned over to the Smithsonian's legal staff on June 13th. He would appreciate it if you would keep him posted on those deliberations, so that they know when a decision might be reached, and whether to hope that there will be word in time for their summer ceremonies.

According to Bill Tallbull, the pipe is needed to officially seat members of the Dog Soldier society. In 1931, Joseph Tallbull (Bill Tallbull's brother) received the Dog Soldier whip, and the authority to enforce the tribe's traditional covenants from Chief Big Back at the Sun Dance that year. He alone in the Northern Cheyenne tribe holds the authority to perform the ceremony of receivership necessary to officially seat the Dog Soldiers. Since 1869, when the Tall Bull pipe was lost to the Cheyennes, the ceremony has not been performed in its completion and the Dog Soldier society has been unable to properly seat its members. This is a matter of great concern to the Dog Soldiers, and they are excited at the chance to regain this lost piece of their culture.

At this time, Joseph Tallbull, now 72 years old, is in fragile health and has been hospitalized during recent months. He is the only living Northern Cheyenne authorized to perform the receivership ceremony and feels it imperative that if he is to carry out that responsibility, it must be at this summer's Sun Dance. That takes place the first week of July and is followed by a second Sun Dance the first week of August. At that time he would officially reseat all members of the Dog Soldier society.

If you do not reach a decision on the issue of repatriating the pipe in time for the ceremonies this summer, the Dog Soldiers hope the Smithsonian would

Montana Historical Society
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consider, in light of Joseph Tallbull's age and deteriorating health, a temporary loan to allow them to use the pipe this year. There are several ways that might be arranged. As Chere mentioned to you, the Montana Historical Society is willing to arrange a temporary loan to bring the pipe here with the understanding that we would allow the Cheyenne access to the pipe for purposes of their ceremony. Another possibility proposed by Bill Tallbull would involve a loan from the Smithsonian directly to the Cheyenne, and allow the person from the Smithsonian who transported the pipe to Montana to witness the receivership ceremony.

The Cheyenne hope that you will contact them directly if there are unresolved questions regarding the pipe's origin and authenticity. There is no question in Bill Tallbull's mind that the pipe at the Smithsonian is, in fact, the Tall Bull pipe. He is willing to provide you with further information if you need it and is most anxious to expedite this process if it is possible. He can be reached at Dull Knife College, where he teaches and chairs the Northern Cheyenne Cultural committee. His phone number is 406-477-6215.

We wish you luck in reaching a timely decision on this matter. If we at the Montana Historical Society can be of any assistance, please let us know.

Sincerely,

Robert Archibald
Director

cc: Bill Tallbull

National Museum of Natural History · Smithsonian Institution
WASHINGTON, D.C. 20560 · TEL. 202-

Department of Anthropology
April 27, 1988

Mr. Bill Tall Bull, Chairman
Northern Cheyenne Culture Committee
Dull Knife Memorial College
Box 98
Lame Deer, MT. 59043

Dear Mr. Tall Bull:

In a letter of March 2, 1988, Robert McC. Adams, Secretary of the Smithsonian Institution, reported to you that he had asked the Smithsonian's Department of Anthropology to assemble all the information in our files concerning the pipe identified as having belonged to your ancestor, Tall Bull. I am writing now to let you know that this investigation is nearing completion.

We are attempting to determine as precisely as possible the circumstances under which the pipe entered the Smithsonian collections. This task has been complicated by the fact that General M.C. Meigs, the donor of the collection of which the pipe was a part, was not present at the Battle of Summit Springs. We have yet to discover how he acquired the pipe but are continuing our search for information through records at the Smithsonian and the National Archives.

We hope to conclude our research by the end of May. At that time, we will convey our findings and recommendations to the Secretary, who will then be in contact with you.

Thank you for your patience in this matter.

Sincerely yours,

William Merrill
Associate Curator

Dull Knife Memorial College
BOX 98 • Lame Deer, Montana 59043
Phone (406) 477-6215
Administration
(406) 477-8273

November 23, 1987

Secretary Robert Adams
Smithsonion Institute
Washington, D.C. 20560

Dear Secretary Adams:

I am writing this letter with a particular spiritual goal in mind for my people, the Northern Cheyenne Tribe of Lame Deer, Montana. For several years, I have been personally pursuing the goal for the return of the people's scared objects and artifacts.

Recently, with the assistance of many wonderful people, I was successful in the return of one of our holy objects from the Bufflo Bill Museum of Cody, Wyoming. The object was and is a critical aspect to our Scared Arrow Tipi.

The return of the object gave new hope and encouragement to my present and future efforts. But more importantly, the return of the object was to set in motion a great deal of cooperation between all the people, who were involved with it's return.

And today, I write another letter with the same spirit of cooperation that we can work together with my request for the return of yet, another holy object that has an essential role with the Dog Soldier Society of the Northern Cheyenne Tribe.

The object in question is a pipe that once belonged to the Dog Soldier Society. In 1869, during a military attack of the Dog Soldier camp at Summit Springs, a chief's bundle which included a pipe, which was taken from the Tall Bull lodge.

Since that time the Dog Soldiers have been without it's key object. I cannot emphasis enough, the important role that the pipe has in the traditional re-organization of the society. But I want to especially, emphasis the idea of including the pipe within our efforts of re-shaping the Cheyenne spiritual circle that was broken with the absence of our holy objects and artifacts.

In addition, the effort to re-shape our spiritual ceremonies and beliefs is much more then the return of the pipe. But its an effort that involves the belief that both the Cheyenne teachings and learnings will at last be taught without anymore missing pieces.

But the return of the pipe is just as important to our present practices of our tribal way of life. And within that life is the Dog Soldier Society, who are currently planning their re-organization under the traditional rules of their society.

The process of their re-organization involves the pipe which is regarded as the Society's center pipe. The center pipe provides the important spiritual link to the seating ceremony of the society's new membership during the Cheyenne people's annual Sundance Ceremony.

The Dog Soldier Society has been a functional organization on the Northern Cheyenne Reservation. However, the society has not been able to re-organize under it's traditional rules for a number of years.

But the Society is planning a major traditional re-organization that will include all the rules that govern their roles and responsiblities as members. The major re-organization will be detailed with the knowledge of the present elderly membership as to present a clear understanding to the younger members, the purpose and the meaning of the Dog Soldier Society.

And with the major re-organization in mind, I am respectfully submitting this request for the return of the Dog Soldier's center pipe so that our detailed re-organization plans will be done properly during the Cheyenne Sundance of 1988.

Finally, I want to thank you for taking the time to consider this important matter and if you should need additional information, please contact me.

Sincerely,

Bill Tall Bull

Bill Tall Bull, Chairman
Northern Cheyenne Cultural Committee

cc: Dog Soldier Society Leaders
George Elkshoulder, Sr.
Joesph Tall Bull
Ray Brady
Charles Brady

Chicago Tribune
City Edition
$1 Sunday, July 3, 1988

Excavation tells a tale of Cheyenne courage

By Peter Gorner
Chicago Tribune

CRAWFORD, Neb.—Tucked away in the lonesome serenity of the White River valley, an ugly frontier mystery of torture and racial murder is quietly unfolding.

Archeologists are excavating the old 3d Cavalry barracks at Ft. Robinson, site of the bloody last stand of the Cheyenne Indians, which shocked the nation just over a century ago and still ignites controversy.

The desperate Cheyenne breakout from the barracks on the subzero night of Jan. 9, 1879, after the Army had tried to starve and freeze 130 of them into submission, escalated into a 12-day running battle that covered 40 miles.

Lacking food, blankets or fire, and hopelessly outgunned by about 330 well-rested troops working in relays, the Cheyennes resisted with the caginess and determination that had earned them their reputation as the best warriors on the Plains.

But on Jan. 21, when the carnage finally ceased, 64 Indian men, women and children lay dead on the frozen grasslands. The disaster broke the spirit of the fighting Cheyennes and closed a crucial chapter of the Plains Indians wars.

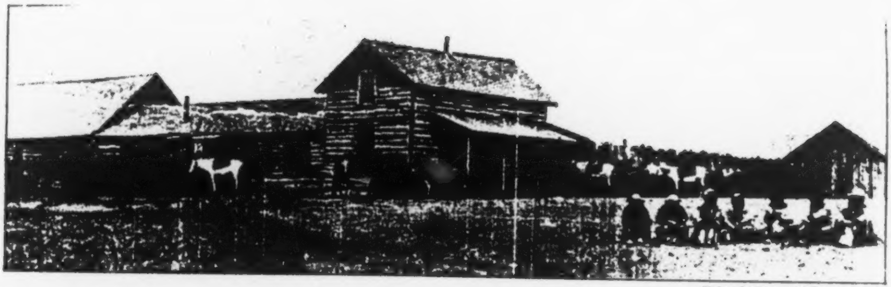
"In our view, this is the most important archeological dig in the country," says James Hanson, director of the Nebraska State Historical Society, excavation sponsor.

"We want to reconstruct the barracks and tell what happened when the last free remnants of a great tribe, the Northern Cheyennes, decided they would rather die at Ft. Robinson than be confined to a reservation in Oklahoma."

Today about 2,200 Northern Cheyennes live on their reservation in Lame Deer, Mont., which they say they won with their blood. Public outrage at the Ft. Robinson massacre forced President Chester A. Arthur in 1884 to grant them a reservation of their own.

Ft. Robinson, a picturesque, 23,000-acre outpost in the northwest corner of Nebraska, sits on the high prairie amid towering sand-

See Indians, pg. 10



Nebraska Historical Society photo

A pioneer trading post was part of Ft. Robinson, Neb., over 100 years ago. Taken over by the state in 1948, the 23,000 acre site has become Nebraska's largest and most popular state park.

Indians

Continued from page 1

stone bluffs and ponderosa pines. Taken over by the state in 1948, it has become Nebraska's largest and most popular state park, a place where buffalo still roam and tourists play.

In the 1870s, Ft. Robinson was responsible for policing about 13,000 resentful and defeated "hostiles"—Sioux, Cheyenne and Arapaho—camped in the valley and dependent on government handouts for survival.

In 1877, the great Sioux war chief, Crazy Horse, the conqueror of Custer at the Little Bighorn the previous year, was bayoneted to death a few feet away from the current excavation. He had refused to enter the "iron house," as the Indians called the Ft. Robinson jail.

Custer merited a national monument and state park. Crazy Horse, whose body was stolen by his people and secretly buried, has received only a little log shack of remembrance. The main feature is a clock inside forever set at 6:10 (p.m.), the time of his murder

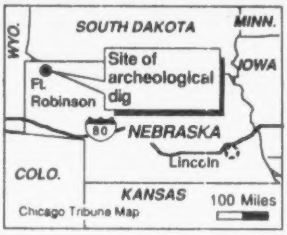
Now, after more than a century, the Cheyennes are to have a reconstructed barracks. They're suspicious about the whole affair.

"We weren't consulted, so we're upset," says William Tall Bull, of Busby, Mont., tribal historian of the Northern Cheyennes. "If they find artifacts, who do they belong to? More important, there's a mass grave somewhere on the grounds of the fort that nobody will talk about. No one will tell us where the grave is. We'd like to put up a little shrine, or something. A lot of my relatives are there."

To military historian Tom Buecker, curator of the Ft. Robinson museum, the importance of the excavation does not depend on any artifacts found.

"The history is what matters," he says, "the epic march that brought the Cheyennes to this fort and then the Outbreak, one of the major battles of the Indian wars."

The Ft. Laramie Treaty of 1851 had ceded 122,500 square miles of land to the Cheyennes, including most of western Kansas and Nebraska and eastern Colorado. Two years later, 15,000 settlers migrated west and slaughtered the buffalo.



Chicago Tribune Map

Starving and hopelessly outnumbered, the Cheyennes engaged the whites in all-out war, but after many bloody battles they were forced to give up their lands. The Southern half of the tribe was restricted to a reservation in west-central Oklahoma.

The Northern Cheyenne bands remained free to live near their sacred mountain, called Bear Butte by the whites, in present-day Sturgis, S.D. But everything changed when gold was discovered in the Black Hills in 1875. Major battles followed, including the last and greatest victory by the Plains tribes, Custer's Last Stand on June 25, 1876.

The hardships of winter and unceasing warfare eventually forced the Cheyennes to surrender. The last holdouts finally agreed to move to the Oklahoma reservation, but with the understanding that they could return north if they didn't like it there.

The Northerners began to die in the South. In less than a year, they lost 44 of their people from starvation, malaria and hot-weather diseases to which they had no natural immunity. On Sept. 9, 1878, led by Chiefs Dull Knife and Little Wolf, 90 other men, 120 women and 141 children quietly left their tents standing and headed home.

In the next six frenzied weeks, forts and towns emptied along the escape route. Some 10,000 soldiers and 3,000 civilians—shopkeepers, cowboys, ranchers—chased the fleeing Cheyennes across Kansas and Nebraska.

The tiny band fought and moved on, raiding a few settlements in vengeance while outfighting and outmaneuvering their pursuers. Finally, in mid-October, the exhausted Cheyennes vanished into the vastness of the Nebraska sandhills.

Little Wolf wanted to stay there and hide; Dull Knife wanted to keep going. So two groups formed. Little Wolf's people eventually made it home, but Dull Knife's band got caught in a blizzard in the Pine Ridge country, where soldiers found them and took them to Ft. Robinson.

The soldiers disarmed them, but the Indians had already dismantled many of their weapons and tied the parts to their children's hair and clothing, where they passed unnoticed as ornaments.

Despite the subzero weather, Washington officials ignored the Army's pleas for warm clothing for the Indians and ordered them returned to Oklahoma. The Cheyennes flatly refused to go, saying they would die first, and Army commander Capt. Henry W. Wessels locked them in the cavalry barracks.

The furious Indians barred the windows, tore up the floorboards, made clubs from the timbers and shook them through the windows at the soldiers. They dug foxholes three feet deep to repel invasion.

Finally, after five days without food, they painted themselves for death.

They embraced the children, pieced together their weapons and, at 10 p.m., exploded suddenly from the windows into the bright moonlight, shooting the guards. Surprised soldiers, some in their underwear, tumbled out of their barracks.

After the Indians somehow eluded capture for days in the deadly cold, it all ended at a place called Cheyenne Hole. The Indians dug a large rifle pit, put the young men at the edges and the women and children in the middle.

The soldiers surrounded the hole, closed in, and for nearly three hours shot and killed anything that moved. The last Indian resistance on the Plains was crushed.

"The barracks symbolizes that fact better than any other building in America," says Hanson. "History cries out that we reconstruct it."

July 28, 1988

The Honorable John Melcher
Select Committee on Indian Affairs
838 Hart Senate Building
Washington, D.C. 20510

Dear Senator Melcher:

This letter is prepared to be part of the record in respect to testimony on S. 187.

In prior testimony on or about February 19, 1987 as examples of items of a religious or sacred nature which were in the possession of Museums or collections we told of a strap used used in conjunction with the Sacred Arrows covenant as a means of keeping count of the number of times sacred grass is burnt. This item was at the Buffalo Bill Museum at Cody, Wyoming. It has since been returned.

The second item was a pipe belonging to the Dog Soldiers Chief Bundle which was taken from Chief Tallbull during the Battle of Summit Springs, Colorado, 1869. That item now reposes in the Smithsonian Institution, Washington, D.C.

It is my understanding that at that time the Smithsonian Secretary, Robert Adams, stated that the Pipe would be returned.

The Smithsonian then withdrew that offer and apparently have chosen that item to be of central focus of their objections to S. 187.

In an official response to Tribal requests to return the Pipe even through intermediaries for ceremonial purposes the Smithsonian choses instead to ask for added information relative to the provenance of the item.

This letter to you now as our intermediary due to the political problems which may arise will, in part, answer the last response of the Smithsonian in the matter.

The Pipe has a dual ceremonial purpose. It is used for the reseating of the Society and otherwise as a means of spiritual conveyance of the tribe while on a journey. It is smoked four times during a journey as a way of seeking protection for the tribe.

It is smoked after the decision to go is made and from that time on no member of the Society is to look backward from where they came. The pipe is smoked two times enroute and for the last time when the destination is reached.

The third smoke had just been concluded when the troops of General Carr attacked.

The decision to go north from Oklahoma had been made. There was no turning back. Little Wolf had signed the treaty of Fort Laramie, 1868. Terms of that treaty were uncertain to that part of the Cheyenne Tribe which had gone south after the Fetterman Battle near Fort Phil Kearney in which the Dog Soldiers had participated.

About 1830, the Tribe had split into two bands to facilitate travel and the feeding of the people and assure that if anything overcame the Tribe one part would survive. From that time forward there was constant travel between the two bands. Proof of this is found in the aftermath of the Sand Creek Massacre where many Northerns were found to be present.

While the Dog Soliders were not a party to the Treaty, it was felt that they should go north to see Little Wolf who was of the Elk Horn Scrapers and learn the terms of the Treaty. They had heard that some respite might be gained in the Treaty area.

For them, however, a state of war still existed.

It should be known that there never was two dog soldier factions--always and ever there has only been one--always and ever will there only be one. Tallbull was the keeper of the Bundle for the Dog Soldiers.

Tallbull would have had no other pipe in his possession except for that pipe.

Tallbull's wife in the provenances provided states that the pipe was his.

The only conjecture evident on balance is the Smithsonian's conjecture. The only ambiguity evident is the Smithsonian's ambiguity.

The only people qualified to make decisions in regard to the pipe are the hereditary Dog Solider Chiefs.

Ceremonies can be carried on without certain items of antiquity if that decision is made to do so. However, those rituals are diminished in impact.

The black bowl question highlights only one point--that the Smithsonian itself could not keep the pipe intact. Tall Bull would have been carrying no other pipe. That bowl would have been red as a ceremonial bowl should be. How there came to be a black bowl attached as per the illustration by Colonel Dodge fully fourteen years after the battle and nine years after the Smithsonian's acquisition is truly a mystery but that mystery was created in whatever manner by the Smithsonian.

That pipe is a communal pipe belonging to the Dog Soldier Society for purposes of spiritual protection of the whole tribe. As the Dog Soldiers were always the first society in line of march and the keeper is always at the head of the Dog Soldiers, that pipe, in essence, serves as the foremost standard as the tribe moves forward.

The Dog Soldiers are concerned that "plunder of war" would be used as a means of not turning the pipe over.

Was the action at Summit Springs a police action as we now know it or Congress in the fullest sense under Article 1 Section 8 of the United States Constitution actually go on record as declaring war on the Northern Cheyenee Tribe or any other tribe?

Was the United States government legally responsible for returning all goods confiscated in the course of those many actions during those decades of the so-called "Plains Indian Wars"; if said wars were not legally engendered?

We must caution that such declarations in precedent could even affect the return of MIA's of Vietnam and have other far reaching effects from the world perspective.

The Dog Soldiers have gone on record to cooperate in a manner totally unprecedented; the purpose of which could only expand the knowledge of people everywhere.

Why is the Smithsonian reluctant to pursue that which is the very reason for their existence?

These matters the Dog Soldier Society has asked me to convey to the Smithsonian through your good offices.

The Smithsonian must come to the Northern Cheyenne Reservation to conclude the investigation and witness the ceremony. The invitation has long been extended through the Montana Historical Society. Why has there been no action or appropriate response?

If they come, the pipe could come with them; we could smoke; the ceremony could be recorded; and all could be made well. We do not want controversy.

As ever,

Guy W. Parker

Guy William Parker
As messenger for the Dog Soldier Society
Northern Cheyenne Tribe

Northern Cheyenne Cultural Commission
Bill Tallbull, Chairman for
The Northern Cheyenne Tribe of Indians
Lame Deer, Montana

In testimony before the Senate Select Committee on Indian Affairs concerning Senate Bill 187 - Native American Museum Claims Commission Act as introduced and amended by John Melcher of Montana. Presented on or about the ~~8~~29th day of July, 1988. Chairman Daniel Inouye of Hawaii.

I bring you greetings and best wishes from the Northern Cheyenne Nation, our Tribal Council representatives, and Tribal Chairman, Robert Bailey.

In prior testimony on the original Senate Bill 187 submitted on or about February 19, 1987, our concerns were presented in general philosophical context as well as in specific terms relative to the language and organizational intent as we interpreted same.

Specifically, therefore in respect to the thrust of SB 187 as amended, we are constrained to make comment in regard to the format and structure of the proposed legislation which at the outset may appear to be totally negative to the intent.

This is not the case. We propose at the same time to draw your attention to a larger perspective.

First of all, we must express concern over the fact that from within the purview of the entire retinue of the United States government whether legislative, executive, or judicial attendent to the issues at hand and other issues which directly concern the need for traditional cultural input, we are highly doubtful that any more than one person exists who adheres to traditional beliefs and can address these concerns from the standpoint of the intrinsic knowledge and insight that the practice of those beliefs through ceremonial instruction imparts.

Thus, we believe that legislation implementation and/or interpretation will always fall short of the fair and equitable mark or even a middle ground resolution when it comes to traditional cultural considerations.

We therefore beg or you to take full heed of what we proffer herein.

Secondarily, other concerns rest fully on the issue at hand beginning with legislation and regulations now on the books which will cause the positive impact of this legislation to become mired in the usual piecemeal, helter skelter precedential morass so typical of Indian affairs legislation, regulation, and interpretation.

We would suggest that a broader range resolution could be brought forward which would consolidate and incorporate several separate needs into one central oversight concept which would be acceptable to the vast majority of concerned citizens and at the same time be far more cost effective than the random approach now in effect.

Many of us who supported the Native American Religious Freedom Act as a positive and binding step forward are now dismayed that an unfortunate and possibly faulty defense of the provisions of that act in a recent California case may have relegated major tenets therein to the judicial scrap heap.

During President Reagan's recent visit to Russia the question arose as to whether or not fair and equitable treatment had been given to Native Americans when the issue of human rights came to the forefront.

Naturally the international posture of the United States cannot be defended from that perspective. The answer to that question cannot be swept under the rug with a few offhand comments. The eyes of the world are upon us.

We must submit that indigenous people worldwide can only scoff at the pretensions of this country as we sally forth to protect them and wonder whether or not they will only inevitably fare the same under the sphere of United States influence.

We can only chide our federal representatives whether on the national front or the worldwide stage when they continually leave themselves wide open by the ambivalent approach to their own indigenous situation.

Is it no wonder why communists and totalitarian promises seem so inviting to native people the world over by comparison?

It has been stated before only recently in testimony before this committee that in essence it will never be known whether or not Native American appropriations are adequate to the problems at hand because the funding emanates from such disparate sources in such a piecemeal manner that for every $3.00 issued probably less than 75¢ impacts.

So it is with not only the problems addressed by SB 187 but to relative issues as well such as the education and training of Native American museumologists; the questions of how and where to inventory; return and repose these collections; identify and house; how to prevent in a meaningful way the continued illicit trafficking in such articles which otherwise treated only leads to continued plunder and desecration; and how to enhance the intrinsic and monetary value of such collections which were not gathered under the most base circumstances.

How can we reinforce the grand language of the Native American Religious Freedom Act?

Can we at the same time provide a more definitive support base for the cultural responses required of Environmental Impact Statements (EIS) for projects which infringe on Native American traditional cultural imperatives?

The Northern Cheyenne tribal government, for example, provides its Cultural Commission with the authority to respond to the EIS which affect the tribe. Because of this our tribe has gained considerable knowledge relative to laws, rules, and regulations involved in the process. What we do not have is the funds necessary to provide proper testimony; comment or insight in order to help perfect the EIS during the formative stages. For that reason we are forced into a defensive stance which as one can readily see through current litigation only leads to delay and uncertainty on the part of those investors seeking project approval and on the regulatory agencies empowered to give that approval.

Once again we find that those delays are not only costly to us in terms of upfront dollars better used elsewhere for legal and scientific expertise but are costly as well in terms of time and money to the developer, the worker, and the taxpayer.

We therefore envision a federally supported effort incorporating all of these areas into one program which provides the institutional means whereby educational, repositorial, and responsitory needs can be met not only from the traditional imperative but from the government/private industry requirements as well as from the public and private collector needs for a vehicle to legitimize and enhance the value of their collections.

In the past Native Americans have been reluctant to reveal certain sites and practices for fear that sharing that knowledge would inevitably result in expropriation through plunder, commercialization or other exploitive desecratory practices.

It has been our experience that the law as far as Native Americans' religious freedom is concerned has no teeth.

Silence until the last possible moment we have learned has been our best protection. That last moment entry can and often does destroy the best laid plans of investors at considerable time and dollar expense.

While we may never totally relinquish that stance, nevertheless with our help provided for in a meaningful way, time frames can be shortened and the resultant cost can be diminished considerably.

Truly we feel it is your move. Do we diminish the prospect of taxpayer costly regulatory delay; uncertainty and litigation or do we attempt to find common ground from which to dispose of resolvable issues in a more mutually satisfying manner?

It is ~~safe to say~~ OUR ESTIMATE that on an annual basis probably in excess of ~~one billion~~ 250 MILLION dollars is appropriated and spent on these joint specific issues.

Fifteen to 20% of that amount devoted to these issues from the traditional perspective could reduce that total appropriation by as much as 60% for a savings of as much as 40-45%.

As it is now we must deal separately with the Bureau of Indian Affairs, the United States Geological Survey, Bureau of Land Management, Forest Service, US Parks and Recreation, Environmental Protection Agency, the Smithsonian Institute, Indian Health Service, Department of Education, various colleges, universities, and museums, etc. etc.

It is no wonder that silence is our best protection until the critical moment arrives. Do you realize how costly this process is to impoverished Indian tribes? Do you realize how much more effectively those taxpayer dollars could be used?

Now as far as the specifics of SB 187 are concerned:

No mention is made of the inventory and monitoring of private collections.

A registration process must be instituted with a grace period followed by heavy penalties for unregistered trafficking. A fee can be charged for registration purposes to defray cost and a registration number will be assigned. The articles in question must be photographed, described, and origination location determined.

This would aid tribes in identifying said articles and reviewing collections for items of ceremonial or burial nature importance. Those items can then either be confiscated or compensated for depending on the circumstances leading to possession. This process should be welcomed by every legitimate collector for it would only serve to protect and heighten the value of their collections.

To further support this recommendation I refer you to the Native American Rights Fund Legal Review, Vol. 12, No. 2, 1987 "Federal Indian Burial Policy: Historical Anachronism or Contemporary Reality?"

Earlier I referred to our primary defense of silence on the critical issues until the last possible moment. From the standpoint of this tribe, Bear Butte near Sturgis, SD stands as our most heartbreaking example of sharing our antiquity with those who would not honor the absolute sacred nature of our most holy sites.

Until knowledge of the meaning of Bear Butte became known to non-Indians, it was just a geological anomaly hardly useful for any purpose except for the hardy few who might have the time to climb to the top to look at the surrounding countryside. It was dismissed early in the gold rush days as unproductive. Then, suddenly it became important to the State of South Dakota because of its "historical" significance. It became in essence another tourist attraction to the Black Hills along with Mount Rushmore, the Badlands, Calamity Jane and the Homestake gold mine.

While that state to its credit does provide a relatively tasteful and respectful exhibit and does allow us to have ceremonies on the Butte, nevertheless, it is the state's now. No longer in the truest sense is it ours.

The state will not allow us right of way to land we have recently purchased at the north base. A private individual has done so for us but should he sell we could lose that access.

On July 1 of this year, we gathered with state and federal officials and traditional representatives from the Lakota, Teton, and Arapaho to discuss ways and means to include ourselves and those tribes in pending claims to the Black Hills. We smoked the pipe.

At the same time three vans of college students from St. Albion's College had stopped on the highway and scattered across the northwest base of the Butte. Some had climbed as far up as one-third of the distance.

Nothing was done to stop them. I ask you were we Indian people to scale up one-third of the way of the Capitol building or one of the churches in Washington, or God forbid, the Lincoln Memorial, how far do you think we would get and how long would we have to sit in jail?

This is how we feel about Bear Butte. Can you restore that to our exclusive use and control? To the State of South Dakota it means dollars. To the Cheyenne it means our very existence.

Quite clearly on a case by case basis, the expenditure of federal dollars vis a vis litigatory claims, regional political disputes, and ill will among the citizenry caused by conflicting claims to property rights and use whether real or personal will emerge from this type of non-compensatory legislation. The arbitrary nature of the resolution will most certainly be declared unconstitutional by fait accompli establishment of the inability to determine clearly whether or not freedom of religion vs. freedom of real and personal property ownership will prevail.

Secondarily, the burden of litigatory expense will undoubtedly fall on the federal government due to the trust responsibility of that entity in respect to Native Americans in general. Matters before other claims commissions have proven to be a long and costly affairs fraught with obfuscation, delay, highly-inflated attorneys fees and expert witness costs.

As poor as Native Americans are, we cannot pursue review of all museums and public collections to establish claims. We have no funds to properly ~~to~~ REBAIN and repose these burial remains and ceremonial items.

We do not know what the private sector collections hold and how they were obtained. We do know that many of these people have done so illegally and/or trade on the contents of the graves of our ancestors for the purpose of acquiring monetary benefit. Therefore, a registration numbering process is essential to stop this horrible practice.

SB 187 alludes to the fact that the commissioners will serve on a part time basis. This most certainly will not suffice. The variant nature of the tribes involved, the vaste amount of loot in the hands of collectors, etc., etc. calls for people of a special nature to be responsible for such authority.

Only traditional people can make that determination and devise those qualifications.

This section relegates the thrust of the bill to a tongue-in-cheek exercise.

Sec 4 (c) indicates that one of the commission shall be an Indian. We submit that this person should be a Native American acknowledged by his peers to be a knowledgeable person practicing traditional beliefs and ceremonies.

It is hoped that by the time this testimony is presented that further recommendations will be ready for submission. If not, they will be submitted within the next ten days as part of this total record.

If so, it will continue forward from this point. You must not allow your fellow legislators to view this lightly or as a matter of small consequence. The integrity of the country is at stake.

Thank you for your kind consideration.

HAUDENOSAUNEE
MOHAWK - ONEIDA - ONONDAGA - CAYUGA - SENECA - TUSCARORA
ONONDAGA NATION - VIA BOX 319-B NEDROW NEW YORK 13120

TESTIMONY OF CHIEF VINCENT JOHNSTON AND CHIEF OREN LYONS OF THE ONONDAGA NATION, FIREKEEPERS OF THE HAUDENOSAUNEE ON S. 187- THE NATIVE AMERICAN MUSEUM CLAIMS COMMISSION ACT

JULY 29, 1988

Mr. Chairman and distinguished Committee members, the Onondaga Nation Firekeepers represented today by Chiefs Vincent Johnston and Oren Lyons, welcome the opportunity to comment on the proposed amendment by Senator Melcher to S. 187.

We agree the bill should be amended and made into a law that will protect the sovereignty, dignity and group rights of Native American Nations, tribes, societies, and peoples as defined in your amendment.

We are familiar with the arguments brought forth by the government institutions and agencies, universities and colleges, museums, historical societies and associations, archaeological and anthropological societies and associations, and private collectors and auction houses all demanding in the name of education, health, science and sometimes commerce the right to the national cultural treasure, patrimony and very bones of Native American Nations and people.

They state quite clearly without apology that they have rights to our dead over claims that we make on the national behalf. So the question is one of human, religious, legal and group rights of Native American people versus the interests of the educational and scientific community.

We submit that the legal, moral, ethical and religious rights and issues to be addressed over-ride the parochial interests presented by the aforementioned groups.

The current collection of Native American human remains in the Smithsonian Institution numbering some 18,000 separate beings is the direct result of a mid-nineteenth century Federal policy that reflected the racist attitude of the times. That is a dismal reality of American history, but what is even more appalling is that today, July 19, 1988, those Native American skeletal remains are still being held against the will of the Native American people. In our opinion, there cannot be scientific and educational reasons enough to override the moral, ethical and spiritual rights of the indigenous peoples of these lands to these bodies of their ancestors. It should be repugnant to the American public to continue these vestiges of racism in their public institutions.

The Board of Regents of the Smithsonian Institution are headed by William H. Rehnquist, the Chief Justice of the United States and George Bush, Vice President of the United States, with three esteemed members of the Senate and three esteemed members of the House, plus nine citizens members. Are we to assume that the refusal to return Native American bones back to their mother earth is the policy of this Board of Regents? Where we come from leadership is responsible for actions and activities of organizations they represent. We should be profoundly interested in Board of Regents comments on this subject.

The legal issue of repatriation must be addressed. Repatriation revolves around the status of title. Law favors title. Title is absolute ownership against the world. Native Americans have the law on their side. They have title to their national cultural treasures and cultural patrimony involving the graves and bones of their ancestors. There can be no legal argument against this title. Museums, institutions and associations cannot hold title to native Nations' cultural treasures and patrimony. They simply do not have equal weight.

We note that your amendment stresses negotiations prior to the exercise of law. We have gone through this process once successfully, most other times not successfully. One of the primary reason for our frustration is the qualifying stipulations to the repatriation of sacred objects and artifacts often imposed upon us. If the objects and sacred articles belong to the Native Americans, then the organizations holding them have no right to put any qualifications on their return. Law does not allow the possessor of stolen goods to stipulate conditions of their return.

Mr. Chairman, it is our opinion that the current policy of the Smithsonian Institution and other museums concerning the repatriation of skeletal remains is unreasonable, caprices, and denigrating to the Native Americans.

We believe the policy to be unreasonable and self-serving in demanding that Indian Nations supply proof of identification of remains in their possession for as long as 150 years. They side step the issue of title and obfuscate the principal of ownership by raising conditions that are not relevant to the fact they possess skeletal remains of another race of people.

Mr. Chairman, there is a strong need for the law that you recommend, we need this law now. The need for regulation in this sensitive field is long overdue and we commend your efforts in this direction. Our Nations have suffered every hardship that humanity can endure. We have been dispossessed of our land rights, we have been forcibly removed from our homeland, we have been slaughtered in our beds. We have been stripped of our languages and cultures, we have had our children taken from us and made strangers to us. And still today the very bones of our ancestors are kept from us, many locked away in simple green cardboard containers stacked one upon the other.

We ask again, is this the policy of the Vice President of the United States and the Chief Justice of the Supreme Court? We refuse to be rationalized out of existence by the contrivances of archeological and anthropological organizations, and demand that the rights of the original peoples of this great land be recognized. We are not discussing the possession of property, we are discussing the survival of our Nations and heritage of our children, the soul of our people.

Mr. Chairman, we have specific recommendations on this bill, S. 187.

--Under findings, Section 2(d), American public law has not respected our burial grounds.

--Under definitions, Section 3(d), the definition of a "Native Hawaiian" should be re-examined with consultation of Native Hawaiians.

--Under Native American Museum Claims Commission Section 4(b), we recommend the Commission be comprised of at least seven members, four of whom should be Native American. Because of the complexity and vast areas to be served we think that three members would soon be swamped with problems, making the Commission ineffective. Four Native Americans would be a minimum number needed to meet the demands of such a commission and most importantly place them in the majority. For too long, Indians have been in the "minority" when making decisions that directly impact them.

--Under Resolutions Section 9(a), the Office of Hawaiian Affairs may be too far removed from traditional Kapunas. Claims should be made by the Hawaiian Natives.

--In Section 17 on the 4th line, "no party" should be changed to "the parties involved" to insure that an outside "party" unrelated to the particular situation cannot suddenly appear to intrude and upset the claims resolution process.

A general comment is that in any negotiation, the Native American component have the right to establish criteria according to their beliefs and cultural integrity.

COMMUNIQUE

Issued by: Haudenosaunee Grand Council of Chiefs

Onondaga Nation February 2, 1986

Regarding the cultural patrimony and national cultural treasures of the Haudneosaunee.

The Haudenosaunee (also known as the Six Nations Iroquois Confederacy), and, each member nation (Mohawk, Oneida, Onondaga, Cayuga, Seneca and Tuscarora) seperately and collectively claim all sacred objects, human remains, and traditional territory as our cultural patrimony, and our national cultural treasures.

The chiefs, clan mothers, faithkeepers, and members of our contemporary traditional medicine societies and the people that they serve are the rightful owners and authorities of our cultural patrimony and our national cultural treasures.

It is the obligation and trust responsibility of each succeeding generation of chiefs, clan mothers, faithkeepers and medicine societies of the Haudenosaunee to preserve our patrimony and national cultural treasures for the seventh generation to come.

ISSUES

DESECRATION OF GRAVES

The human remains and associated graves, sacred burial sites, and related objects from the graves of the Haudenosaunee are the responsibility of each generation of chiefs, clan mothers, and faithkeepers. Therefore, the disturbance, destruction, and theft of our patrimony is a violation of our human rights; a violation of our group rights; and a violation of the religious and spiritual welfare of our people.

WAMPUMS

The continued possession of the sacred Haudenosaunee wampums by the State of New York Museum in Albany, the Museum of the American Indian in New York City, the Smithsonian Institution in Washington, D.C., and various other private museums, historical societies, and private collections of individuals are a violation of our human rights; a violation of our group rights; a violation of our religious freedom; and an infringement on our sovereignty.

These sacred wampum belts and strings are an inalienable and imprescriptible heritage of our nations, individually and collectively, and of our people today.

MEDICINE MASKS

The continued possession of medicine masks by national, state, county and private museums, historical societies, and private collections is a violation of our human rights, our group rights, our religious freedoms, and a violation and deprivation of the spiritual needs of our medicine societies and the people they serve.

Arguments to the contrary by anthropologists, ethnologists, museum boards and directors, educational institutions, not withstanding, the undeniable fact is that we are a contemporary civilization and culture with a functioning governing body of chiefs recognized by the government of the United States and the State of New York.

Therefore, all other entities are secondary and must give way to the six nations of the Haudenosaunee and our people as the ultimate and final title holder of our patrimony.

HISTORY

It is the opinion of the leaders of the Haudenosaunee that contemporary disciplines of anthropology, ethnology and related fields, and institutions such as natural history museums and historical societies have their roots in the Western theory of manifest destiny. A racist theory that permeated social, educational, and military thought up to and including present time.

In the United States, government support and use of anthropology gave the government a vehicle for rationalizing it´s treament of Indian nations and people in a smokescreen of scholarly activity. John Wesley Powell´s success in 1879, in convincing Congress that anthropology would be useful in getting Indians peacefully allocated to reservations made it possible for the Bureau of Ethnology to underwrite a large amount of research on topics somewhat tenuously to that end.1

Kathleen Gough pointed out that anthropology is the child of imperialism and "..it seems extraordinary then, that anthropology has no general theory dealing with imperialism".2 Anthropology and it´s related fields exist and are free to operate because of certain oppressive political conditions, "Anthropological fieldwork can function only when the field situation is guaranteed by superior power. Yet the anthropologist acts as if that power did not exist, despite the fact that his very mode of operation is predicated upon it." 3
Anthropologists have played a lead role in advancing racist and oppressive theories of imperialism, as best stated by John Wesley Powell:

> "...savagery is not inchoate civilizations; it is a distinct status of society with it´s own institutions, customs, philosophy and religion..All these must necessarily be overthrown before new institutions, customs, philosophy and religion can be introduced"4

It is also interesting to note that anthropology, and it´s related fields, does not assess the validity of contemporary Judeo-Christian religions, nor do they challenge or question the integrity of newly formed religious movements, such as Jerry Falwell´s Moral Majority or Pat Roberts´ 700 Club. However, they feel they have the right to evaluate, denounce, interpret, and denigrate the leadership of the Haudenosaunee and other Indigenous nations.

This pompous attitude is best displayed in the recent remarks of William Fenton during the Williamsburg Conference on the "Imperial Iroquois" in the Spring of 1985. Dr. Fenton's remarks were aimed at the current Tadadaho of the Haudenosaunee, Chief Leon Shenandoah, when he said: "..it (the council fire) burns today in the minds of the traditionalists for whom the Grand Council has symbolic value which they project on the media. Some of it's critics among the Seneca say the smoke now arises from Tadadaho burning old tires on the reservation junkyard."

The remark is significant in the context of the forum in which it was presented, being a gathering of noted experts in their field who are expected to be dealing with the subject matter in a professional and dignified manner.

That anthropologists have, and do, become involved in the internal political affairs of Indigenous nations and their people is exemplified by the activities of William Fenton who campaigned for the overthrow of the traditional government of the Tonawanda Senecas in 1935.

Laurence Hauptman chronicles these events in his book "The Iroquois and The New Deal".

"John Collier, Commissioner of Indian Affairs, directed W.K. Harrison, the Indian Agent in New York, and William Fenton, the Indian Service community worker based at Tonawanda, to hold public meetings on the (Wheeler-Howard) Act, and to deliver copies and information door to door" pg. 65

"Fenton supported the Act because he feared that the educational and economic support would be lost if the IRA was rejected" pg. 68

"In December 1934, Commissioner Collier, in a speech in Pittsburg, stressed the need to work closer with anthropologists. The commissioner had borrowed this idea from the British Empire's use of social scientists. Moreover his plan was to use them where missionary influence had previously been strongest.
In 1935, Collier appointed William Duncan Strong of the Bureau of American Ethnology to head the newly created Applied Anthopology Staff of the B.I.A. Through the efforts of Strong William Fenton was appointed as community worker in the Indian Service at Tonawanda receiving $2,000 per year subsidized use of his car and $3.50 per diem per day for travelling expenses." pg. 107

"The project was faced with an uphill battle. A major problem involved the by-passing of the chief's council at Tonawanda, a deliberate move to the project rolling as fast as possible to secure W.P.A. funding without being held up by intertribal factional political activity. More over because the need for a group to take the lead and be a responsible sponsoring body or 'holding agency' under the laws of the state, traditional Iroquois beliefs about themselves as an independent sovereignty would have emerged to block the council's support for the center." pg. 130

The combination of the Depression years, Indians out of work and available W.P.A. monies created a fertile ground for exploitation and economic control over the Senecas and other nations of the Haudenosaunee.

It was in this milieu of circumstances that Arthur Parker realized his dream project to build a collection of Iroquois art and cultural objects that would equal the collection of Lewis Henry Morgan, which had been destroyed by fire in 1911.

Despite the objections of traditional leaders and people to the "secularized" carving of medicine masks, Parker successfully co-opted people into a massive carving project that was the beginning of the commercialization of sacred masks. The ability to de-spiritualize the sacred is an art that seems to be peculiar to Western sciences and civilization. It has been noted by some Westerners, such as Levi-Strauss:

> "To study men, we treated them as objects; but to study men as objects - from the privileged position of the imperialistic observer - was but to deal with them as they were already dealt with in the world of economic and political coercion. As the laborer was treated as a source of impersonal labor power, so we too, treated men as sources of tradition, abstracted from their evident human predicament."

Individual Indigenous people have been the victims of all of these designs to overthrow, eradicate, or in the least make subordinate, the ways of life they were born to. These persons then become local imitations of the racist and oppressive originators of this whole pattern of dominance.

The curious pattern that now occurs is the development of "Indian" anthropologists who aspire to the credentials of that discipline, and, become spokespeople for Indian nations, people and cultures. One such person is George Abrams, director of the Seneca Iroquois National Museum in Salamanca, New York.

During a workshop entitled: "Care and Interpretation of Native American Collections" at the Buffalo Museum of Science in April 1983, Mr. Abrams made two remarks:

1. that he was addressing the "faithful", that is the museumologists assembled who perceived as an informed audience concerning Indians; and,
2. that his opinions "were not popular among other Native Americans"

It is important to examine the person more closely in this case because his opinions are regarded as definitive statements on the cultural patrimony of the Haudenosaunee throughout the non-Indian world.

In November 1979, the "Courier Express" ran a story headlined: "Museum Head Approves Display", datelined Salamanca. Mr. Abrams was interviewed concerning a display of Haudenosaunee medicine masks at the Buffalo Museum of Science. In the article Mr. Abrams promotes the line of there being a difference between "ceremonial" and "commercial" medicine masks. The article states:

> (Dr.) Abrams...finds ´nothing objectionable´ with the display...The types of masks being displayed he said, are

> ceremonial masks, but are masks produced for commercial puposes only...Officials of the Buffalo Museum of Science consulted with (Dr.) Abrams concerning the policy of the Salamanca Museum, before permitting the current display to be opened to public, (Dr.) Abrams confirmed."

In reprinting this article we have placed parentheses around the word Dr. because there is much to question about the authenticity of this title.

George Abrams actively promotes the policy of displaying medicine masks and the sale of medicine masks. The public is entitled to know where he acquires his authority for such activity. He says that the policy is a decision of the Advisory Board of the Seneca Iroquois National Museum and that they have permission from the Longhouse people to do this.

The Haudenosaunee chiefs have discussed this matter with the Longhouse leaders in Cattaraugus and Allegany and they are all of one mind in their opposition to this exploitation.

It has been pointed out that George Abrams is a Christian and therefore cannot speak for the Longhouse People or the medicine societies. So he derives no authority from the institutions and leadership of the traditional Seneca people.

It is also important to note that Mr. Abrams has not fulfilled the requirements for his doctoral degree in anthropology, and is therefore misrepresenting himself as a doctor of anthropology. This becomes important when such misrepresented credentials are the criteria for appointments to prestigious boards such as the Heye Foundation.

The divergent opinions of Christianized or secularized Iroquois are irrelevant. However, when the opinion of such a person is coupled with the responsibility of sacred masks and policy regardinng Haudenosaunee patrimony then we must be clear in our position that this person is violating our religious freedoms and is a full party to the exploitation of our culture.

Such an Indian person also becomes, knowingly or unknowingly, an ally to all those who seek to perpetuate cultural genocide by insisting on denying us and other Indigenous nations our national cultural heritage and patrimony.

No other document draws the battle lines more clearly than the letter from the so-called Committee on Anthropological Research in Museums of the American Anthropological Association to then Governor Nelson Rockefeller, dated February 23, 1970 and issued in Norman, Oklahoma. The letter is signed by Dr. William C. Sturtevant, Smithsonian Institution, Dr. Donald Collier, Field Museum of Natural History, Dr. Phillip Dark, University of Southern Illinois, Dr. William Fenton, State University of New York, Mr. Ernest Stanley Dodge, Director, Peabody Museum.

In two paragraphs these men set forth the racist, irrational, and demagogic arguments that characterize the conflict:

"As scholars whose researches depend on the great ethnographic

> collections of now largely vanished primitive peoples of the world we urge the preservation of such mementos of culture in museums. We deplore the principle of returning such treasures to the acculturated descendants of their original owners lest a precedent be established that would require logically returning Ibo carvings to Nigeria, Asmat art to New Guinea, and the works of Florentine painters to Italy.
> That the wampum collection of New York has now an appreciated value of one quarter of a million dollars is a further footnote on inflation. Nevertheless, state property should not be legislated away lightly in the illusion of religiosity or as capital in the civil rights movement to an unidentified portion of the aboriginal inhabitants who may not fairly represent the 10,000 descendants of the Iroquois Confedracy now living in New York, or an equal number in Canada.(Emphasis added)6

This letter is significant for several reasons, 1. that it is signed by the top anthropological authorities of the times, and 2. that it encompasses most of the processes and terminology used against Indigenous nations and people in contemporary times for the purposes of maintaining custody and control of our national treasures.

Ethics seems to be the last consideration in the letter to Governor Rockefeller. By this letter the signers violate every cannon set forth by the American Anthropological Association in their Principles of Professional Responsibility, in particular:

> "In research, an anthropologist's paramount responsibility is to those he studies. When there is a conflict of interst, these individuals must come first. The anthropologist must do everything in his power to protect their physical, social, and psychological welfare and to honor their dignity and privacy." (Emphasis added)

There remains one last important point in this letter, and that is the reference to the monetary value of the sacred wampum belts. This leads to a factor that isn't talked about publicly with museum circles. But is certainly of utmost interest nationally and internationally because of the clandestine trade in sacred treasures of other nations and their cultural patrimony.

Recently, New York Attorney General Robert Abrams brought criminal charges against the internationally recognised auction house of Sotheby Parke-Benet as dealers in stolen goods.

These charges were brought in behalf of the Jewish people and the loss of their national cultural treasures by an individual who did not have title to these treasures, and therefore could not convey title in the sale. Attorney General Abrams charged Sotheby's with prior knowlege of this questionable title and insisted on auctioning the goods.

This case is of extreme importance to the matters here tonight, because for the first time the moral question and moral responsibility of the State of New York in such matters was addressed.

This reflects directly upon our case, and cases of all Indigenous nations and peoples who are the victims of such trades, sales, and exchanges nationally and internationally.

We are gaining support from many quarters nationally and internationally such as the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by the General Conference of UNESCO at it's sixteenth session in Paris, France on November 14, 1970. This Convention has been accepted and codified by the United States with President Reagan signing the Convention on Cultural Property Implementation Act (P.L. 97-446) on January 12, 1983. 6

The legal issues of repatriation revovle around the status of title. Law favors title, title is absolute ownership against the world. The national cultural treasures of the Haudenosaunee are the property of today's generation of people and the governing body of chiefs who represent them. Possession does not run against the sovereign without his consent. Therefore, title remains with the Haudenosaunee.

The balance of equities tips decidely in favor of the Haudenosaunee when measured against the relatively minor loss of property considering the vast collections of the Heye Foundation, the New York State Museum and the Smithsonian Institution.

The only other resource to title of the Haudenosaunee patrimony and national cultural treasures is to destroy our nations as we stand today, and that is forbidden by your code of ethics. Furthermore, this power resides outside of the authority of anthropologists, ethnologists, museums public and private, and their related fields.

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FOOTNOTES:

1. Hinsley, 1981; and Stocking 1985 B: 113
2. Caulfield 1974: 182
3. Wolf 1974: 459
4. Wolf 1974: 254
5. Fenton, W. Indian Historian vol 3, #2 (1970)
6. U.S. Information Agency Fact Sheet, "Cultural Property Advisory Committee

SUPPORT REPATRIATION OF NATIVE AMERICAN SACRED OBJECTS

Please write letters in support of repatriation to the following:

Dr. Roland Force, Director
Museum of the American Indian, Heye Foundation
Broadway at 155th Street
New York City, N.Y. 10032

Robert McCormick Adams, Secretary
Smithsonian Institution
Washington, D.C. 20560

Martin Sullivan, Assistant Commissioner
New York State Museum
Cultural Education Center
Empire State Plaza
Albany, N.Y. 12230

Also, send letters of support for the return of Native American sacred objects now in the New York State Museum to:

Governor Mario Cuomo
Governor's Office
Executive Chamber
Albany, N.Y. 12224

with copies to:
Secretary of State Shaffer
Department of State
162 Washington Street
Albany, N.Y. 12231

DESECRATION ISSUE
for
Orens Lyons

What we are talking about here is living together with Mother Earth - Father Sky with respect in harmony for all living things from the smallest creatures to the largest mammals for all things that Mother Earth gives us to substain life. We are talking about the oneness of life.

All things are connected so when you destroy part of the circle of life the entire circle is affected. Balance is the essence of life. Different life support systems are in balance naturally,when you destroy part of the system you unbalance the entire system. Our ecological system is out of balance not only because of the pollutants being used that pollute the water, the air, and the land, it affects all life given to us by the Great Spirit, our Creator.

The actions that took place on Slack Farm are one of the examples where men have dug up over 1200 Indian graves, stole the personal and sacred belongings of these people and mutilated their bodies. These acts created an unbalanced circle. We must now pray for forgiveness for these actions. The weather, the people, the entire circle is being affected. In order for Mother Nature to balance these actions, there must be an action as strong in the opposite direction to pull us back in balance.

Recently, Uniontown was the location for an American Indian Reburial. While many of these remains have been reburied we are still left with a very serious problem. The men who dug up, mutilated, and scattered the remains of these people, my people, across the Slack Farm, not only stole their sacred and personal belongings, but also stole many of their skulls. They are now trying to sell or trade or retain these skulls for personal profit and gain, along with the sacred and personal belongings (so called artifacts). If these skulls were the skulls of your grandmother, grandfather, mother, father, sister, brother, or child, wouldn't you want them returned?

The voice of millions of Native Americans and non-Indian people are asking and demanding the return of these skulls. This time, the sacred and personnal belongings, bodies, skulls, and the graves of my people were desecrated, if allowed to continue, and it is continuing, next time it could be your people, your family or you!

These so called collectors, hobbyists, pari-archeologist, diggers, pot hunters, whatever they may call themselves, need to be stopped.

What are your religious beliefs and feelings about this issue? How do you feel as a human being about these things? Do you want your children growing up to believe it is just to rob graves regardless of whom might occupy the grave? Does the digging up of graves show the love and respect we all are taught as human beings in the oneness of all life?

If you have any knowledge of the whereabouts of these skulls or any information that could help us locate these skulls for reburial, please contact the coroner in your county. Our primary interest, our only interest is the return of the remains and total discontinuance of grave desecration.

What we are talking about here is living together with Mother Earth-Father Sky and each other in harmony with respect for all living things, the oneness of all life.

CHIEF VINCENT JOHNSON
ONONDAGA NATION.

TESTIMONY OF THE NAVAJO NATION
BEFORE
THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
CONCERNING AMENDMENT 2124 TO S. 187
NATIVE AMERICAN MUSEUM CLAIMS COMMISSION

Presented by:

Russell P. Hartman
Director-Curator
Navajo Tribal Museum

for

Ninibah Kahn
Executive Director
Navajo Division of Resources
Navajo Nation
Window Rock, Arizona

July 29, 1988

On behalf of the Navajo Nation, I would like to thank the Select Committee on Indian Affairs for this opportunity to testify before you concerning S. 187, the "Native American Museum Claims Commission."

The Navajo Nation applauds Senator Melcher for his recognition of the problems facing the Navajo people and other Native Americans in their struggles to maintain their unique cultures. Museums around the world hold within their walls vast quantities of Navajo materials, including skeletal materials, ceremonial items, and numerous other archaeological and ethnographic items, collected over a period of well over 300 years. Because the exact whereabouts and identity of some of these materials are unknown to the Navajo people, it is impossible to say what percentage is vital to the preservation of Navajo culture. It is safe to say, however, that the removal of many items over the years would not have been permitted if the Navajo people had known about them. And given the opportunity now to have them returned, there are undoubtedly many instances where the Navajo people would indeed make that request.

The Navajo Nation generally supports the well-intended goals of S. 187, but we do have concerns about specific points therein, which will be outlined later in the testimony.

As proposed, S. 187 authorizes the federal government to intervene upon the request of tribal governments in the recovery of individual items that were taken off the Reservation often years ago. But it does not address the circumstances which permit the ongoing separation of these items from their originating cultures. In recent years, museums have become increasingly sensitive to Native American concerns and there are numerous examples in which Native Americans and museums have successfully resolved differences. If given ample time to discuss the many issues involved, these two parties can often reach some kind of agreement. However, unless the underlying causes of the problems are addressed, both Native Americans and museums will continue to find themselves in adversarial situations.

One of the primary reasons that Native Americans see so much of their material culture leaving their homelands and ending up in private collections and off-reservation museums is the lack of adequate museum facilities with properly trained native staffs in their own communities. Even those who have established their own museums lack the resources to develop them so that they can deal with the quantity of materials or the number of issues involved. In addition to a federal commission that will address some of the problems faced by Native Americans and Hawaiians, native communities would be well served if other funds were authorized for the development of native museums and training programs for native staff, so that materials deemed by tribal members to be vital to their cultural integrity could be provided and maintained at home. It is true that no action will completely eliminate the illegal removal of certain cultural property from tribal lands and its subsequent sale to unethical and/or unsuspecting private collectors and museums, but the development of native museum facilities, more than anything else, would greatly reduce the quantity of materials lost each year by native peoples.

At this time, I would like to comment on specific sections of S. 187:

Section 2(b)

While this finding is generally correct, it does not point out that most acquisitions of Native American materials by museums are considered legal, and frequently in the case of archaeological collections, mandated by laws such as the National Historic Preservation Act, the Archaeological Resources Protection Act, the American Indian Religious Freedom Act, and other preservation-minded laws. Although archaeological investigations on Indian lands now require the consent of the particular Indian tribe and resulting collections are considered the property of that tribe, the lack of adequate museums or other curatorial facilities operated by tribes necessitates the continued removal of these collections from their points of origin for permanent curation. The interrelationships between the above laws and the proposed legislation we are discussing today are extremely complex and merit more study.

Section 2(d)

The Navajo Nation takes exception to the statement that American law has historically respected the sanctity of burial grounds and protected them from desecration and depredation. American public law has not historically respected Native American burial grounds, whether they be individual interments or multiple gravesites. Instead, Indian burials have been allowed to be dug up and looted, even when their locations posed no particular threat to development. Even today, such burials, especially when no direct descendent can be identified, are protected only if they are located on federal lands. To deal with this problem on Navajo lands, the Advisory Committee of the Navajo Tribal Council in 1986 approved the "Navajo Nation Policies and Procedures Concerning the Protection of Cemeteries, Gravesites, and Human Remains." This resolution is attached.

Section 2(g)

This section points out that no federal law exists to facilitate the resolution of repatriation disputes between Native Americans and museums. The implication is that court systems are incapable of resolving such disputes.

It is also implied that there are currently many unresolved disputes between Native Americans and museums or that many future requests will reach an impasse. It should be noted that in many instances in recent years Native Americans and museums have successfully resolved their differences. Some of these have been widely publicized, but an even larger number have been accomplished without any publicity at all.

Section 4(d)

It is not specified how the level of interest and experience of commission nominees will be determined, but it is difficult to imagine that three individuals could have adequate knowledge of, and insight into, each of the hundreds of Native American tribes or bands currently recognized by the federal government. It is imperative that a highly qualified staff of experts be authorized by this legislation to provide the detailed knowledge of Indian culture and related issues that commissioners might lack. The complex nature of disputes requires an extensive understanding of tribal cultures and of the many issues that come to play in such cases.

Section 8

In authorizing funds for the Commission, there is no mention of the costs of the parties who appear before the Commission. When introducing this legislation Senator Melcher rightly pointed out that few tribes have the resources to engage in costly litigation, the assumption being that this Commission would eliminate such costs. Defense of a claim before this commission would do no such thing. It is inconceivable that a tribe would file a claim and present its case without considerable counsel. Unless these costs are borne by the commission, the total costs for any tribe filing a claim with the commission could easily equal or exceed the costs of judicial litigation.

Section 9(a)

This section authorizes only the governing bodies of Indian tribes or the Office of Hawaiian Affairs to file claims before the commission. Although this limitation may be mandated by federal law, it does not take note of the complexity of native social organizations. Many tribes and bands are today governed by elected, civil bodies, but that does not preclude the existence of traditional leaders and a variety of organizations of religious or ceremonial leaders.

The need to identify within S. 187 the proper authority within a tribal group, depending upon what type of material is being considered, is especially important when dealing with ceremonial objects. Ceremonial knowledge is usually the domain of the most traditional members of a tribe and that information is not readily discussed outside the culture. Many ceremonialists may be entirely unwilling to reveal before a public commission the detailed information relating to the specific use and/or importance of certain objects that would be necessary for the commission to render a decision, especially if they thought that information would be made public. Again, face to face negotiations between these individuals and the appropriate museum representatives, over a period of time longer than that proposed in Sec. 9(c)(1), would be far more likely to produce fruitful results.

Section 9(c)(1)

This section sets dates after which claims may be filed with the commission, but the suggested timeframe during which the disputing parties can negotiate a settlement on their own is inadequate. The sensitive nature of repatriation issues and of the material involved and the complexity of the many resulting legal and ethical issues all require a far greater length of time to identify the many issues and the appropriate individuals to represent both parties. Beginning on the date when the specific items are identified by both parties and a formal request for the return of those items is made, a period of no less than one year should be allowed for serious negotiations before a claim is filed before the Commission.

Section 16(a)

This section deals with the future protection of items after they have been repatriated. The loss of ceremonial items for Native American communities is attributable to many factors, including but not limited to: 1) theft and subsequent sale to private collectors or museums through an extensive underground market or through legal channels including public auction houses, 2) a decline in the number of trained ceremonialists within a particular tribal group and the dispersal of their ceremonial equipment, either through sale or donation, by family members upon the death of these individuals, 3) increased acculturation, especially among younger generations of tribal members. No indication is given as to how these issues will be addressed, and yet they are often cited by museums as some of the reasons for not returning items when requested. Museums would like some assurance, perhaps through the strengthening of laws such as the American Indian Religious Freedom Act, that items that have been repatriated will not appear on the market again in a few years.

A solution to this problem is to curb the commercial market for such materials that has developed in recent years. This may require an amendment to the American Indian Religious Freedom Act, in other relevant legislation, restricting possession of Native American ceremonial objects to anyone but 1) members of the culture in which they originated; 2) tribally owned and/or operated museums; or 3) other museums with the consent of the tribe, and/or also prohibiting the sale or exchange of such items between anyone but members of that culture or between a member of that culture and a museum owned or operated by that culture.

In closing, Mr. Chairman, I would like to address a subject which -- while peripheral to the main thrust of this legislation -- is vitally important to us as it impacts the interment of tribal member remains.

Approximately 16,000 members of the Navajo Nation are veterans. Many of them have seen active combat and many, particularly the famous Navajo Code Talkers, are decorated patriots. The sad truth, Mr. Chairman, is that unlike our neighboring states, we receive no VA assistance for the purpose of creating and maintaining a veterans cemetery on our lands.

What this means, is that the family of a deceased Navajo veteran often must choose between a burial in accordance with Navajo tradition, on Navajo land -- or a proper veterans funeral, somewhere far off the Reservation. That's an unfair choice -- and we urge you and your committee to consider authorizing Federal support for a Navajo Nation veterans cemetery at the earliest opportunity.

Again, thank you for giving me this opportunity to appear before you. I will be happy to answer any questions you may have.

I am John T. Vance and I appear here today at the invitation of the Chairman.

It has been my privilege to aid in drafting this bill, at the request of Senator John Melcher, sponsor of the bill. I have tried to assist in setting forth a procedure which, if adopted, may provide a more equitable way to correct a long-standing irritant to all Native Americans.

I am astounded that my fellow Americans must petition the Congress in order to regain proper custody of the mortal remains of their ancestors. But stating that does not gainsay the fact that indeed they must follow such a course. And I say more's the pity that they must petition the Congress to force the trustee, who is charged with protecting them, to cease and desist from this continuing depredation against them,.

In the 17th Century Sir Walter Raleigh observed that people participated in mass deception when "a number can do a great wrong and call it right, and not one of that majority blush for it."

In the 19th Century Nathan C. Taylor, President of the Peace Commission to end the Indian Wars and also Commissioner of Indian Affairs, wrote: "...Indians saw their former houses and hunting rounds overrun by a greedy population, thirsting for gold. They saw their game driven east to the plains, and soon found themselves the objects of jealousy and hatred. They too must go. The presence of the injured is too often painful to the wrongdoer, and innocence offensive to the eyes of guilt. It now became apparent that what had been taken by force must be retrived by the ravisher and nothing left for the Indian..."

He described the Chivington Massacre in Colorado in 1864 which "scarcely had its parallel...fleeing women, holding up their hands and praying for mercy, were brutally shot down; infants were killed and scalped in derision, men were tortured and mutilated..."

Taylor concluded: "...it was dishonorable to the Nation, and disgraceful to those who had originated it."

I hope that the bill will be approved by the Committee. It is never too late to try and remedy a grievous wrong to our fellow citizens.

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TESTIMONY OF WALTER R. ECHO-HAWK BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON A SUBSTITUTE BILL (AMENDMENT NO. 2124) FOR S.187, THE "NATIVE AMERICAN MUSEUM CLAIMS COMMISSION ACT"

July 29, 1988

Mr. Chairman and Members of the Committee, I am Walter R. Echo-Hawk, a staff attorney at the Native American Rights Fund. I am pleased to offer testimony on behalf of NARF in support of the Substitute Bill (Amendment No. 2124) for S.187, entitled the "Native American Museum Claims Commission Act."

The Native American Rights Fund is a national, non-profit, native interest legal organization that provides legal representation to American Indian, Native Hawaiian and Alaska Native tribes, communities, and individuals on significant legal issues. NARF has long been deeply concerned with the subject matter of the instant substitute bill. NARF assisted the federal government in identifying the scope, nature, and magnitude of expropriation of Indian graves and religious objects during 1979 as part of the government wide review mandated by section 2 of the American Indian Religious Freedom Act (Pub.L. 95-341, 92 Stat. 469).[1/] NARF is also familiar with repatriation issues and problems by virtue of its

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[1/] Section 2 required the President to direct all federal departments, agencies or other instrumentalities to evaluate their policies and procedures in consultation with traditional native religious leaders to determine changes necessary to protect or preserve Native religious cultural rights, and to report back to Congress on August 11, 1979.

prior and present legal representation of Indian tribes[2] and the scholarly works of NARF staff attorneys.[3] I wish to

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[2] In 1978 and 1979, NARF provided legal assistance to Zuni leaders in successful negotiations for the repatriation of a stolen sacred Zuni War God statute (Ahayu:da) in the possession of the Denver Art Museum. In Charrier v. Bell, 496 So.2d 601 (La. App. 1 Cir. 1986), cert. denied, 498 So.2d 753 (La. 1986), NARF represented an Indian tribe in an action brought by an "amateur archaeologist" to quiet title to burial goods dug up by him from tribal graves located on private land. The Court quieted title to the grave goods in the Tribe, stating that:

> Reason dictates that these objects, when and if removed, rightfully belong to the descendants if they be known and for such disposition as the descendants may deem proper. We hold accordingly.

(Trial Court Slip Opinion at 11-12). In Sequoyah v. Tennessee Valley Authority, 620 F.2d 1159 (6th Cir. 1980), cert. denied, 449 U.S. 953 (1980), NARF represented the Cherokee Tribe in efforts to prevent flooding of tribal sacred sites and grave desecration of Cherokee graves by the TVA. Among other things, the Tribe asserted that the TVA's action in excavating and retaining Cherokee bodies for study was discriminatory where the TVA also excavated Caucasion and Black bodies from the same area but reinterred them. The Court did not reach or rule on the Cherokee equal protection claim and this legal issue therefore remains unresolved. As discussed in more detail elsewhere, NARF presently represents the Pawnee Tribe in seeking state legislation to protect Pawnee Indian graves in Kansas and in Nebraska, and to rebury 150 dead Indians presently on public display in a privately-owned tourist attraction in Kansas, and to repatriate over 100 deceased Pawnees being withheld from burial by a Nebraska state institution. In general, NARF has closely monitored and commented on relevant state legislation to provide prospective unmarked burial legislation, and routinely receives requests, complaints or other information regarding mistreatment of Indian graves and human remains by state, federal and private parties.

[3] See, e.g., Moore, Federal Indian Burial Policy--Historical Anachronism or Contemporary Reality?, 12 NARF Legal Rev. No. 2 (Spring 1987); Echo-Hawk, Museum Rights v. Indian Rights: Guidelines for Assessing Competing Legal
(Continued on next page)

speak first to the compelling need for national legislation to establish an efficient and fair process for the repatriation of human skeletal remains, grave goods and religious objects to proper parties, and then provide constructive comments upon the substantive provisions of the substitute bill.

NARF is in full support of the general concept and intent of the Bill, but believes that our comments upon various substantive provisions embody necessary changes to adequately protect the interests of our Native clients. Historically and presently in this country, anti-grave robbing and mutilation statutes, as well as the common law of dead bodies and of sepulcher, are strictly enforced for everyone _except_ for American Indians and other Native people. As a result, unbridled and systematic expropriation of Native dead has occurred on a massive national scale over the years. The Substitute Bill would establish a remedial procedure for rectifying some of the very real damage done to living victims of that expropriation, and thereby facilitate society's trend toward bringing Native people into the ambit of existing legal protections which has always been available to other citizens to protect their legitimate interests in the dead.

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[3] (Continued from previous page) _Interests in Native Cultural Resources_, 14 N.Y.U. Rev. Law & Soc. Change 437 (1986).

I. THE NEED FOR THE "NATIVE AMERICAN MUSEUM CLAIMS COMMISSION ACT"

The need for the Bill becomes self-evident after an examination of the scope and nature of the expropriation of Native religious patrimony and the violation of Native sepulcher by federal, state and private parties; and after examination of repatriation issues and problems. I will discuss the need for the Bill primarily as it relates to skeletal remains and grave goods, rather than as the Bill relates to religious objects, because the former category of sacred objects involves present cases that I am handling. Moreover, it is my view that much of the need for the Bill arises from an apparent inability or refusal of the general public, both historically and presently to accord the sanctity of Native graves the same simple respect as it does to its own.

A. The Facts and Circumstances Surrounding The Expropriation Of Native Burials Demonstrate The Need For The Bill.

At this point in time, the need for the Bill should be factually self-apparent, despite denials by museums in possession of literally thousands of dead Indian bodies. In 1979, the Carter Administration submitted the American Indian Religious Freedom Act Report to Congress as was mandated by Section 2 of the AIRFA. That Report, which was the result of a one-year government-wide evaluation, informed Congress that federal museum practices and other federal practices leading to disturbances and expropriation of Indian graves have caused identifiable harm to Native religious liberty and cultural integrity. Id. at 64, 66, 76-81. Appendix C to the Report presented examples of specific problems to support the findings of the Carter Administration.

As to federal practices giving rise to the need for a repatriation process for deceased Natives and grave goods, the Report states in pertinent part:

> Native American religions, along with most other religions, provide standards for the care and treatment of cemeteries and human remains. Tribal customary laws generally include standards of conduct for the care and treatment of all cemeteries encountered and human remains uncovered, as well as for the burial sites and bodies of their own ancestors.
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> * * *
>
> The prevalent view in the society of applicable disciplines is that Native American human remains are public property and artifacts for study, display and cultural investment. It is understandable that this view is in conflict with and repugnant to those Native people whose ancestors and near relatives are considered the property at issue. Most Native American religious beliefs dictate that burial sites once completed are not to be disturbed or displayed, except by natural occurrence.

Id. at 64. The Report described the ways in which Native graves have been disturbed:

> The disturbance of Native American burial sites on federal lands may be purposeful or inadvertent. Purposeful disturbances include authorized archaeological and educational use of the site, as well as illegal abuse, pillage and vandalism of the site. Inadvertent displacements usually occur when federal roads, dams or other construction projects proceed in the absence of adequate site surveys and without consulting the affected Native Americans.

Id. The Report also identified ways in which museums acquired the remains and grave goods so disturbed:

> Many sacred objects are taken from Native graves located on Indian and public lands and donated to museums by persons possessing federal permits under 16 U.S.C. §432. By statute, all such gathering is undertaken for permanent preservation in public museums. No provision exists in 16 U.S.C. §432 and 43 C.F.R Part 3 for Native use and possession of sacred objects taken in this manner.

The Report gave 68 specific examples of disturbance and expropriation of Indian burials in Appendix C that were discovered by the Carter Administration in 1978-79. The Report also cited four examples of problems relating to museum possession, display, and failure to return skeletal remains and grave goods.

Since the date of the Report, facts continue to emerge showing the enormous numbers of Native skeletal remains and grave goods that have been expropriated and are presently in the possession of federal, state, and private parties. The numbers known to NARF at this time are shocking, but I am loathe to guess at definitive total national figures for fear of grossly underestimating the systematic grave expropriation which has occurred. The Smithsonian Institution, for example, has now disclosed that it alone houses about 18,000 ~~13,000~~ Native skeletal remains.[4] The North Dakota State Historical Society has estimated that it possesses remains of at least 200 individual American Indians. The Nebraska State Historical Society estimates it possesses 500 American Indian descendants, and at least 100 of these are admitted to have been removed from historic Pawnee Indian cemeteries. A privately-owned tourist attraction in Kansas presently has on public display 146 dead Indians who are probable ancestors of the present day Pawnee, Witchita and Arickara Tribes. Because many public museums possess Indian remains and grave goods, the results of a formal national museum survey would undoubtedly revel that untold thousands of Indian graves have been expropriated. The difficulties in securing reliable information on a museum-by-museum basis are illustrated by the failure of the Smithsonian to respond, orally or in writing, to

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[4] We do not yet know how many grave goods are associated with those ~~13,000~~ 18,000 deceased Native persons. Moreover, it is my (Continued on next page)

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[4] (Continued from previous page) understanding that the figure refers *only* to the Native remains being housed in Washington, D.C., and does *not* include the untold thousands of Native remains removed from graves located on federal lands by persons with federal Antiquity Act permits and presently being warehoused in non-federal museums across the country. Such remains are under the control of the Smithsonian by virtue of the 1908 Antiquity Act, 16 U.S.C. §432, and regulations thereunder which predate the Archaeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. §§470aa-11, and which have not been repealed by ARPA. For example, under 43 C.F.R. §3.17 (1987) no such collections may be removed from museums without the written consent of the Smitnsonian, and if such museums cease to exist such collections revert back to the Smithsonian. If such collections are not included in the 13,000 estimate, as I am led to believe, then that figure is *grossly* underestimated. *See*, *e.g.*, *Cultural Resources Problems Protecting and Preserving Federal Archaeological Resources*, (GAO Dec. 1987) p. 69. [15.5 million uncatalogued artifacts from NPS lands alone in the Four Corners area.]

NARF's request for information made over 16 months ago,[5] and by similar difficulties NARF has experienced in obtaining facts from the Nebraska State Historical Society.[6]

B. Injuries Suffered By Living Native People As A Result Of Expropriation Of Their Dead Demonstrate The Need For The Bill.

The above facts demonstrate prima facie disparate treatment of Native sepulchers on a national basis, which can only be understood in terms of mass denial of equal protection of the laws. NARF has observed, and will supply examples, real injury to living Native people caused by sepulcher disturbance and expropriation. Injury of this nature cries out for immediate attention necessary to provide appropriate remedial remedies.

The Pawnee Tribe of Oklahoma and its confederated bands are the direct descendants of the aboriginal inhabitants of present-day Nebraska (and northern Kansas) who resided in permanent earthlodge towns along the rivers and streams of that area up until the Fall of 1875, when the Pawnee were removed to Oklahoma, where the Tribe now resides. Based upon facts just now coming to light, it appears that after the Pawnee Tribe was removed, the Nebraska State Historical Society and other state institutions set about to systematically excavate apparently all Pawnee cemeteries within the State of Nebraska that could be located.[7] The Pawnee Tribe was not notified, nor was its consent sought or obtained at any time, as to the disturbance and removal of its burials, and the Tribe is still trying to discover whether the disinterments were done with Court permission or in accordance with existing state law. Today, the Historical Society has Pawnee burial goods on public display and estimates that it possesses at least 100 dead Pawnee Indians taken from historic graves in its "collection."

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[5] See, letter from Steve Moore to Robert Adams, dated March 20, 1987 (Attachment 1).

[6] See, letter from Robert Peregoy and Walter Echo-Hawk to Walter Huber, dated July 6, 1988 (Attachment 2).

Since learning of this situation some six months ago, tribal members have experienced deep and wide-spread emotional distress throughout the Pawnee Tribe. As a result, the tribal government has been engaged in negotiations and legislative efforts to properly rebury the tribal remains and associated grave goods. The history of that effort is recounted in Attachment 2 to my testimony. Thus far, the Tribe's legislative efforts have failed, the Historical Society has repeatedly refused the Tribe's request for reburial, and the Governor has refused to even discuss the matter with tribal government representatives.[8] Repatriation of Nebraska Pawnee remains promises to be an extremely protracted and expensive fight, involving resources the Pawnee Tribe can ill-afford.

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[7] See, e.g., Grange, "Pawnee and Lower Loup Pottery," PUBLICATIONS IN ANTHROPOLOGY No. 3 (NSHS, 1968) at 17-32.

[8] See, Letter from Carlyle to Peregoy dated July 12, 1988 (Attachment 3).

In Kansas, the so-called "Salina Indian Burial Pit" is a privately owned tourist attraction that charges public admission to view the exposed remains of 146 Indians. The owners unearthed the 700 year old cemetery, removed all burial-goods, but left the exposed skeletal remains intact. The owners then covered the remains with varnish or shellac and erected a barn over them. The 146 bodies are probable direct ancestors of the present-day Pawnee, Witchita or Arikara Indian tribes. The affected Tribes were informed of this grave desecration and display in 1986, and have been working to reinter those remains ever since. Even though the display is deplored by the Attorney General, as well as the Kansas scientific community, criminal remedies are unavailable due to an existing loophole in Kansas law. Thus far, state legislators representing the commercial interests of the owners of the tourist attraction have blocked the Tribe's legislative efforts.[9]

The above examples of desecration unquestionably violate all fundamental religious beliefs and mortuary traditions of the affected Tribes.[10] It should not be difficult to understand the resulting extreme mental anguish among the Pawnee Indians that has ensued as a result of these deplorable situations. Humanity has always buried its dead with varying degrees of religion, ritual, reverence, and respect. Sanctity of the dead and their final resting place are not the exception to the rule, as some amateur or even professional archaeologists would have us believe. On the contrary, these values are deeply ingrained in Western civilization and social mores, as is reflected in American common law and in state civil and criminal statutes that protect the sanctity of the grave from unnecessary disturbance.[11] Because these same fundamental values are deeply held by Native Americans, past and present, injury to those values caused by the withholding of Native dead must surely be self-evident to any informed observers. Yet somehow these real feelings of Native people have simply been ignored and disregarded as federal, state and private parties have worked historically and presently to disturb and remove as many Indian burials as possible. The historic federal policy on this matter is sadly documented in Surgeon General's Order, dated September 1, 1868,[12/] and in the overzealous efforts of

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[9] See, Briefing Document for the failed Kansas legislative effort (Attachment 4).

[10] See, for example "Pawnee Mortuary Traditions" attached to NARF's letter to Huber (Attachment 2).

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[11] These universally-held, underlying common law values are aptly summarized by ANNOTATION: Removal and Reinterment of Remains, 21 A.L.R. 2d at 475-76, in the following passages:

> After a lifetime of investigation of the origin of religious structure, the great Sir James G. Frazer concluded that awe toward the dead was probably the most powerful force in forming primitive systems for grappling with the supernatural. [citation omitted.]
>
> "The sepulture of the dead has, in all ages of the world been regarded as a religious rite. The place where the dead are deposited all civilized nations, and many barbarous ones, regard, in some measure at least, as consecrated ground. In the old Saxon tongue the burial-ground of the dead was 'God's acre.'" [citation omitted.]
>
> * * *
>
> [American cases] all agree in principle: The normal treatment of a corpse, once it is decently buried, is to let it lie. This idea is so deeply wooven into our legal and cultural fabric that it is commonplace to hear it spoken of a "right" of the dead and a charge on the quick. [No] system of jurisprudence permits exhumation for less than what are considered weighty, and sometimes compelling reasons.

[12/] That Order reads as follows in its entirety:

> The Officers of the Medical Staff are informed that a craniological collection was commenced last year at the Army Medical Museum, and that it already includes 143 specimens of skulls. The chief purpose had in view in forming this collection is to aid in the progress of anthropological science by obtaining measurements of a large number of skulls of aboriginal races of North America. Medical offices stationed in the Indian country or in the vicinity of ancient burial mounds or cemeteries in the Mississippi Valley or the Atlantic region have peculiar facilities for promoting this undertaking. They have already enriched the Mortonian and other magnificent craniological cabinets by their contribution and it is hoped they will evince even greater zel in collecting for their own Museum. A list of the crania now in the possession of the Museum will soon be published in the Catalogue of the Osteological Series of the Anatomical ______. It is sufficient here to state that 47 of the 143 specimens are Indian crania from the following tribes: Tsuktshi, Flathead, Chenook, Selpsh, Nisqually, 13; Californian, 2; Piegan, Spokane, Mandan, 3; Arickaree, Gros Ventre, 2; __________, Kaw, Minataree, Menominee, 6; Cheyenne, Kiowa, Arapahoe, Wichita, 10; Navajo and Apache, 5; doubtful

(Continued on next page)

early Smithsonian archaeologists.[13] The Substitute Bill merely establishes a necessary remedial process to fairly and

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[12] (Continued from previous page) or half breeds, 5. These crania were collected by Brevet Lieutenant Colonels J. Copper McKee, D.C. Peters, C.C. ________, F.L. Town, Surgeon B.E. Fryer, Brevet Majors J.F. Weeds, W.H. Forwood, Acting Assistant Surgeons W. Matthews and G.H. Oliver, Dr. George Suckley, Mr. George Gibbs, Lieutenant (now Brevet Major General) G.K. Warren, and Mr. Lloyd Brooke. Information has been received of the shipment of an interesting series of crania exhumed from an ancient Indian mound near Fort Wadsworth, Dakota Territory, by Acting Assistant Surgeon A.I. ___________, and of many crania procured at the instance of the Medical Directors of the Department of Columbia and the District of Texas.

While exotic and normal and abnormal crania of all descriptions are valued at the Museum for purposes of comparison, it is chiefly desired to procure sufficiently large series of adult crania of the principal Indian tribes to furnish accurate average measurements. Medical Officers will enhance the value of their contributions by transmitting with the specimens the fullest attainable memoranda, specifying the locality whence the skulls were derived the presumed age and sex, and, in the case of "Mound" skulls, or of those from cemeteries, describing the mode of sepulture, and any traces of weapons, implements, utensils found with the specimens, or any other circumstances that may throw light on their ethnic character.

The subject is earnestly commended to the attention of the Medical Officers of the Army.

BY ORDER OF THE SURGEON GENERAL.

[13] See, e.g., Hinsley, Savages and Scientists, (Smithsonian Institution Press 1981) at 70: (Continued on next page)

efficiently correct some of the damage that has been done to living Native communities as a direct result of the Nation's historic and present-day failure to accord them with basic equal protection of the laws.

C. Repatriation Problems and Issues Demonstrate A Need For The Bill.

Based on information presently available to NARF, as well as on its experience to date in representing Indian tribes on repatriation issues, NARF strongly believes that there exists a pressing need for the Bill. The facts and reasoning for our position are presented below.

1. The Failure and Refusal of the Smithsonian Institution, and other Federal Agencies, or Museum Associations to Provide Responsible Leadership on Repatriation Issues Has Created A Need For Congressional Action To Establish a Speedy and Efficient Repatriation Process.

In the ten years since the enactment of the American Indian Religious Freedom Act, *supra*, and the receipt of the

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13/(Continued from previous page)

> Palmer's [1867] methods among the harassed tribes of the region reflected his detached view of the Indians themselves, as shown in his account of one incident. An Apache child, wounded in an Army raid, had died. "The females of the camp," Palmer recounted, "laid it out after their custom and covered it with wild flowers and carried it to a grave. . .They did it so completely that its body could not be found, as I had a wish to have it for a specimen. . .No persuasion could induce them to tell the secret, so I did not get the specimen."

NARF has in its files other contemporaneous accounts of historic Indian grave robbing proudly made by non-Indians, which can be shared on request.

Report mandated by that Act, national leadership in carrying out the *Report*'s museum recommendations and in responsibly addressing repatriation issues have been entirely lacking. There is no convincing evidence that has been offered by this late date that the Smithsonian Institution will assume that role or responsibility as the national museum. On the contrary, the Smithsonian not only successfully evaded the government-wide evaluation that was mandated by Section 2 of AIRFA[14/] but actually sought to actively undermine the museum recommendations eventually made in the *Report* by attempting to dissuade other federal museums from adopting the recommendations.[15/] In the intervening decade, the Smithsonian has not only failed to adopt standards, failed to disclose needed facts to Native groups,[16/] but has *actively lobbied in State legislatures against repatriation of skeletal*

[14/] The Smithsonian flatly refused to participate or be subject to Section 2 of the AIRFA, claiming that because it was not technically one of the "Federal departments, agencies or other instrumentalities" referred to in the face of Section 2, it was not required to evaluate its policies or make recommendations to avoid unnecessary infringements on Native religious freedom or cultural integrity, like the other federal museums.

[15/] NARF urges the Committee to check the correctness of this assertion by contacting the persons then responsible for the AIRFA Federal Task Force within the Interior Department with first-hand knowledge.

[16/] *See*, *e.g.*, Attachment 1 (Letter from Moore to Adams). Piecemeal facts within the possession of the Smithsonian are only now beginning to emerge (*i.e.*, ~~13,000~~ 18,000 remains) for public scrutiny.

remains and grave goods.[17] Consequently, neither Congress nor Native people can realistically look to the Smithsonian Institution for leadership in voluntarily carrying out the Congressional policies of the American Indian Religious Freedom Act nor to carry out the purposes sought by the instant Bill. Rather than being first by way of example, the Smithsonian, with its 13,000 dead Native bodies and numerous pending repatriation requests,[18] is last. Rather than being willing to participate in a fair and impartial process for the timely and efficient consideration of repatriation requests, the Smithsonian is struggling to find and present facts to avoid such a process as being "unnecessary." Quite frankly, the National Indian community is extremely disappointed, disturbed, frustrated and alienated by the national museum's recalcitrant attitude on this entire matter, which attitude may be a proper subject for necessary congressional oversight in and of itself.

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[17] For example, Douglas Owsley, an Assistant Curator for the Smithsonian Institution, recently lobbied against the Nebraska Bill being supported by the Pawnee Tribe in the repatriation issue discussed earlier in my testimony, apparently on behalf of the Smithsonian--even though the Smithsonian has no ownership or other direct interest in the remains being withheld by the Nebraska State Historical Society over the objection of the Pawnee people. See, Letter from Owsley to Senator Baack (Attachment 5, hereto). NARF does not know whether the Smithsonian has a formal policy to oppose repatriation laws pending before state legislatures or the full extent of its state lobby efforts.

[18] NARF has learned that the States of Iowa and Alaska have requested the return of dead bodies from the Smithsonian for proper reburial in accordance with State law. Additionally, the following Indian Tribes or Alaska Native Villages have similar request pending: 1) The Larson Bay Village of Kodiak Island, Alaska; 2) The Blackfeet Tribe of Montana; and 3) the Oglala Sioux Tribe of South Dakota. For a first-hand look at the insensitive, recalcitrant, and dilatory manner in which the Smithsonian has responded to these requests, NARF urges the Committee to obtain and examine the pertinent documents. (See, ATTACH 8, 9, 10)

Nor can Congress or Native people find any other federal agency to fulfill the intent and purposes of the proposed Bill. For example, the National Park Service, an agency with at least 15.5 million wholly uncatalogued artifacts in its asserted possession,[19/] is presently seeking to frustrate and to prevent the North Dakota State Historical Society from voluntarily returning about 200 Indian descendants and associated grave goods to the Indian people and Tribes of that State for proper reburial.[20/]

Finally, neither can Congress or the Native Community find the kind of national leadership elsewhere which would obviate the need for the proposed Bill. All of the national organizations of professional anthropologists and archaeologists are hamstrung by ethical conflicts of interest or by mutually conflicting professional responsibilities that

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[19/] See, note 4, supra.

[20/] On June 30 the North Dakota Historical Society enacted its policy after extended deliberations, which represents to NARF's knowledge the first significant state museum repatriation effort since the enactment of the AIRFA. (See Attachment 6). On June 28, the NPS wrote to the Historical Society stating if the Policy is enacted it would "demand" the return of the bodies it claims "belongs" to the NPS (which may pertain to about 40% of the 200 Indians and a significant portion of the associated grave goods). See, Letter from NPS to Loendorf (Attachment 7).

inherently renders these groups impotent sources for leadership.[21/] Additionally, these same professional communities are also sharply divided over repatriation issues by marked differences of professional opinion held by the peers in those organizations. Nor has the national museum community offered the kind of demonstrable leadership and initiative to obviate the need for the Bill. The recently enacted repatriation policy of the American Association of Museums (AAM), dated January 15, 1988, can scarcely be considered to obviate the need for the Bill for two reasons. First, it is clear from the face of the AAM policy that it was enacted only in response to the introduction of S.187 by Senator Melcher.

[21/] The position taken by those groups on specific repatriation issues tend to be inherently fraught with conflicts of interest. For example, according to the Principles of Professional Responsibility (1971) of the American Anthropological Association (AAA):

> In research, an anthropologist's paramount responsibility is to those he studies. When there is a conflict of interest, these individuals must come first.

Anti-repatriation position of the AAA in specific cases are thus in violation of this ethic. Likewise, professional archaeology, a sub-discipline of anthropology, also prescribes ethical responsibilities to living descendants in the Code of Ethics of the Society of Professional Archaeologists (SOPA) which serve to plague SOPA with conflicts of interest such that SOPA is precluded from exercising an effective leadership role:

> An archaeologist shall. . .be sensitive to and respect the legitimate concerns of, groups whose culture histories are the subjects of archaeological investigations.

That conflict is further exacerbated by a conflicting professional responsibility to preserve data.

From that fact, the primary purpose of the AAM policy is presumably to obviate the need for the Bill. Second, but more important, the AAM policy is patently inadequate in several major respects.[22]

2. Existing Museum Procedures for Resolving Native Repatriation Requests are so Inadequate, Costly, Unfair, and Time Consuming as to Mandate the Need for a Wholly Independent and Impartial Process.

Except for a recent request to provide direct legal representation to the Northern Cheyenne Tribe that is presently being reviewed, NARF is not directly involved in the many repatriation requests currently pending against the Smithsonian Institution.[23] Therefore NARF cannot supply the Committee with first-hand information or opinions regarding the adequacy of the Smithsonian procedures which should be independently scrutinized by the Committee based upon direct information from the States and the Tribes requesting repatriation. Nonetheless, NARF's experience in representing the Pawnee Tribe in its repatriation request before the Nebraska State Historical Society illustrates the inadequacy of museum procedures that make the need for the instant Bill very clear. Attachment 2 to my testimony provides a detailed account of NARF's experience to date in exhausting the administrative remedies, such as they are, before the Nebraska State Historical Society.

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[22] For example, the balancing test proposed by the policy wholly ignores legitimate Native property rights, American Common law rights, and state statutory rights secured to Natives. The policy, for no self-apparent reason, arbitrarily places "grave goods" in the same category as "ceremonial objects," presumably to make it more difficult for Natives to reclaim them because they do not logically fit under *any* of the tests or definitions set forth for "ceremonial objects," when in fact "grave goods" should be considered as part and parcel with the "human remains" section of the policy for factual, legal, logical, practical and realistic reasons. Furthermore, under the AAM policy, the "balancing" of interests will presumably be carried out exclusively by persons with professional ethical conflicts (*see*, note 25) or with extreme personal self-interests in the claim, both of which have been observed by NARF to effectively preclude fair or sensitive consideration of repatriation request. The many serious defects, assumptions and presumptions of the policy are due in large part to the absence of direct tribal or Native input.

[23] *See*, note 18, *supra*.

There are many reasons why the process established by the instant Bill are superior to available museum procedures for handling repatriation requests. First, it is important for reasons of fairness and impartiality to remove final decision-making authority on these issues from the exclusive province of the federal state, or private party opposing repatriation. In Nebraska, the Pawnee Tribe is playing against a "stacked deck:" 1) museum staff activity working to oppose the Tribe's request before museum policy-makers are in a conflict of interest position under controlling SOPA and AAA ethics, in the opinion of the Tribe; 2) the museum in exclusive control of the relevant necessary facts, discloses only such facts when and where it choses, and has hampered or delayed the Tribe's straightforward effort to gather the facts; 3) suspicious agenda changes and procedural irregularities occur at important policy making meetings which minimize the Tribe's ability to effectively present its case; 4) though the outcome has already been prejudged by prior decisions of museum staff and the museum board, the Tribe has no choice but to continue to exhaust these remedies because no other forum is available short of litigation or special state legislation, both of which alternatives should normally be entirely unnecessary; and 5) no time frame is available for a final decision in this protracted and expensive matter, which would ordinarily preclude the tribal request by attrition were it not for the resources of NARF. A museum, of course, would still be free to utilize procedures of this nature under Section 9(c) of the proposed Bill, because no claim could be filed before the Commission until after the museum has been given ample opportunity to decide the issue, but within a reasonable period of time. But importantly, once a claim is eligible to be filed, the Tribe would then be clearly entitled to expect a fair and impartial process, with a final decision to be entered in a timely manner. The Bill would do nothing more than put otherwise disadvantaged Native claimants on a fair and equal footing, if enacted per the substantive comments submitted by NARF below, and it is difficult to find any reason to object to such parity, though it is easy to understand why museum and groups opposing the AIRFA policies would object to fair, efficient and timely decisions by an impartial third party Commission.

Timeliness is an important factor. The Six Nations negotiated for some 75 years for the return of waumpum belts.

Smithsonian action on pending requests seems inordinately lengthy, in my opinion. The Pawnee repatriation efforts in Kansas regarding the "Burial Pit" have lasted over two years, with no apparent end in sight. The Pawnee repatriation efforts in Nebraska, already protracted, promises to be lengthy. Expense is an important factor. Poor Indian Tribes cannot afford to make repeated trips across the country indefinitely in order to meet potentially arbitrary requirements or to participate in seemingly futile discussions. Tribes should not have to seek expensive special state or federal legislation every time a federal, state, or private party utilizes unfair or inadequate procedures. Impartial legal and evidentiary standards or guidelines are also important factors. Presently, these standards or guidelines are ones selected entirely by the federal, state, and private parties--parties with prima facie self-interest or clear-cut conflicts of interest--and they can and have been arbitrary, unreasonable, and even capricious, as well as inconsistent, self-serving, and legally unsupported.

The Bill has the potential to correct these abuses of discretion and to correct identified repatriation problems. Because of the many needs for the Bill that I have described, and because of the great potential of the Bill to establish truly fair procedure to responsibly address repatriation issues, I will now offer substantive comments upon the Bill itself.

COMMENTS ON THE SUBSTANTIVE PROVISIONS OF THE SUBSTITUTE BILL

In a letter to the Honorable Senator Melcher dated February 19, 1987, NARF submitted lengthy comments on S.187. Our comments on the substantive provisions of the Substitute Bill are set forth below, by section.

Section 2 - Findings

Section 2(a) should also find that numerous private institutions and parties have acquired native skeletal remains, burial goods and ceremonial artifacts. The "Salina Indian Burial Pit" is an example. The word "permanent expropriation" should be added to the end of Section 2(d) to fully and accurately reflect American public law. I am unaware of any caselaw decision applying that body of law that permits the permanent removal of interred human remains without any plan for reinterment. In Section 2(g) the term "public or private" should be added before "institution." This section should more clearly set forth the necessary remedial nature of the Act, based on the national history of disparate expropriation of Native sacred objects, with an additional finding proposed as a new Section 2(h) as follows:

> (h) There is a need to establish procedures to facilitate resolution of such disputes, in light of the national history of expropriating Native skeletal remains, grave goods, and religious objects, in order to alleviate harm done to living Native Americans and to ensure that in the future the Native Tribes and peoples of this country can expect to be entitled to the equal protection of the laws in these matters.

Section 3 - Definitions

The definition of "Indian Tribe" is too restrictive for the same reasons set forth in NARF's February 19, 1987 letter to Senator Melcher. We assume that the definition of "Native Hawaiian" was done in consultation with appropriate representatives of the Native Hawaiian citizenry as recommended in our February 19 letter. The term "museum" should include the phrase "public or private institution or parties." The term "grave goods" should include objects found "in, on, or near the grave or other place of interment" in order to more accurately reflect the larger scope and variety of Native burial and mortuary practices. See, e.g., "Pawnee Mortuary Traditions" (Attachment 2).

Section 4 - Native American Claims Commission

If this Bill purports to be enacted for the benefit of Natives or is deemed necessary to remedy prior violations of Native constitutional rights or rights to sepulture, then Native people should have at least 50% representation on the Commission. This is absolutely critical. To be frank, it is far too easy to envision a "stacked deck" on the Commission, based on NARF's experiences to date and the history of the subject matter, that would defeat the laudible purposes of the Bill and result in an understandable refusal by Native people to utilize the procedures established by the Bill. As a matter of policy and principle, fair and equal footing in this matter is extremely important, and should not be departed from.

Section 5

Provision for Indian employment preference should govern all appointments, hiring, and contracts done by the Commission. Additionally §5(c) should specifically authorize the Commission to grant such interim relief on pending claims as it deems appropriate. The Smithsonian's reluctance or refusal to grant interim relief to the Northern Cheyenne people to use an important Northern Cheyenne ceremonial pipe in an upcoming Sun Dance, pending the outcome of the Tribe's repatriation request is an example of the need or desireability to authorize interim relief.

Section 9 - Resolution of Claims

In section 9(a), the phrase "repatriation of any one of" should be clarified to read "repatriation of any one or more." In §9(a)(1)(A) the phrase "or probable ancestor" should be inserted after the word "ancestor." Section 9(a)(3)(A) should begin as follows:

> were obtained in, on, near or from the grave(s) or other place of interment, deposit or burial of members, or the ancestors or probable ancestors. . ."

Section 12

The section should permit Commission use of only "impartial consultants without any personal or professional ethical conflicts of interest in the claim" to render findings. Moreover, if the "findings" referred to are proposed findings then the section should read "proposed findings."

Section 13

Somewhere in this section provision should be made for the claimant's right to engage in discovery against the party in possession of the claimed object. Typically, museums have virtually all the relevant facts under their exclusive control, and have not been forthcoming in disclosure. Claimants will be disadvantaged unless they are allowed to discover those facts in advance of the hearing as a matters of right and of procedural fairness.

Sections 14, 15, 16, 19 - Decisions on Claims

These sections provide for the preliminary and final decisions or orders on claims. The sections provide only that the decisions or orders shall be based on the "evidence" or "facts" disclosed. None of the sections give the Commission any legal guidelines, tests or standards in considering claims, nor provide any evidentiary presumptions or standards in weighing the facts before the Commission.

NARF believes that there are at least eight well established legal or policy principles that are so firmly established in the American common law or federal Indian law that they can properly be included in the face of the statute to guide the Commission in determining the right to possession. Adoption of these principles will advance the legislative purposes of the Bill, if those purposes are to in fact bring American Indians and other Natives within the ambit of the equal protection of the law heretofor accorded only to citizens of other races, and if the Bill is in fact considered necessary remedial relief for actual harm suffered by Natives by the systematic exclusion of them from these protections.

1. In resolving ownership of artifact issues, the burden of proof should rest upon the non-Indian party in possession, whenever the Native claimant makes out a presumption of title in himself from the fact of previous possession or ownership. See, e.g., 25 U.S.C. §194.

2. A purchaser of property acquires no title where the seller has none to convey. See, Museum Rights vs. Indian Rights, supra, at 441-444 (cited in note 3, supra).

3. Museums have no legal interest in asserting ownership to stolen objects or to objects taken from Indians against their will or without their consent. Id. at 444-45. See also, 18 U.S.C. §1163.

4. "Grave goods" interred for use in the spiritual hereafter rightfully belong to the descendant Tribes, when and if removed, if they be known for such disposition as the Tribes deem proper. Charrier v. Bell, supra.

5. American common law rights in dead bodies were summarized in Jackson, The Law of Cadavers, (Prentice-Hall, 2d.Ed. 1950) at 142-43 as follows: a) the person in possession of the body holds the same in trust for those who are charged with the duty of burial or are privileged to exercise the right thereof; b) the person charged with the privilege thereof is entitled to the possession of the body for the purpose of interment; c) such person is entitled to possession in such manner as not to delay, impede, or prevent interment; d) such person is entitled to the body in the same condition it was in when death occurred; e) after interment, next of kin are entitled to have the body remain undisturbed except for a proper and legally authorized reason.

6. Where remains and grave goods are reasonably identifiable in origin as to a present day Indian tribe or other native group, that tribe or group has the paramount right to control the disposition of the remains or grave goods under American common law as

the nearest next of kin. See, Jackson, supra; 25A C.J.S. at 492-93.

7. In resolving disputes over the right to reinter a dead body, an important factor should be whether the remains were disinterred and carried away from the original place of interment in accordance with American common law requirements; and the burden of proof should be upon the party opposing reinterment to show that the disinterment was done in accordance with those principles. No citation is offered, because there is no principled reason to exclude Native citizens from the benefits and protections afforded by American common law; in fact, such exclusion would be contrary to fundamental equal protection principles.

8. As an evidentiary matter, appropriate weight must be given to tribal oral traditions, and to traditional law, custom or practice, and to applicable traditional Native religious cultural practices or beliefs, regarding relevant ownership, burial and mortuary, and descent and distribution issues, where such body of traditions, laws, customs or practices controlled at the time the sacred object left native hands or was interred by Native next of kin. See, e.g., AIRFA Report at 64, 76, 81. See, also, "Museum Rights vs. Indian Rights," supra at 443.

As an additional, but extremely important legal proposition regarding Sections 14-16, 19, NARF seriously questions the intent and constitutionality of the provisions of the Antiquities Act, supra, the Archaeological Resources Protection Act, supra, and regulations thereunder which imply or are interpreted to imply that deceased American Indians and associated grave goods found on public lands "belong" to the federal agencies as their "property," especially where such remains and graves are identifiable in origin to specific next of kin or to present day tribes. See, NARF's February 19, 1987 letter to Senator Melcher. Because such interpretation would necessarily be violative of due process and equal protection rights and principles, I urge that the instant Bill expressly adopt all eight of the above established legal and policy principles "regardless of any other pre-existing or inconsistent federal statute."

Section 19

Should the reference to "section 16" really be a reference to section 18?

Sections 21, 23

Shouldn't the term "aggrieved party" in Section 21 be the "non-complying party?" In Section 23 shouldn't the reference to "section 211" be section 20?

Section 24

Should there be a conjunction such as "and" or "or" between §24(a) and (b)?

CONCLUSION:

Thank you for the invitation and opportunity to submit testimony on the substitute Bill. I am especially grateful to Senator Melcher for his continued interest and concern in this extremely important matter. I am hopeful that my testimony will be helpful to the Committee in its consideration of the Bill.

Sincerely,

Walter R. Echo-Hawk

WEH/mdc

POLICY (6/30/88)

REGARDING REINTERMENT OF HUMAN SKELETAL REMAINS
AND ASSOCIATED GRAVE GOODS
PRESENTLY HELD IN COLLECTIONS OF
STATE HISTORICAL SOCIETY OF NORTH DAKOTA

Background

By motion adopted at the August 1, 1986, meeting of the State Historical Board, it was determined to move toward a policy of reinterment of Indian skeletal remains and associated grave goods in the collections of the State Historical Society of North Dakota. By further motion adopted at the same August 1, 1986, meeting, a five-member Reinterment Committee was appointed, whose responsibilities were (a) to hold a series of hearings to gather public comment on the issue of reinterment, with the resultant testimony, both oral and written, to be used by the Board in developing an agency policy regarding reinterment, and (b) to make recommendations to the Board for the development and adoption of agency policy. The religious and legal rights of the Indian people of the state have been presented to and considered by the Board, along with the traditional beliefs and opinions of the Indian people of the State. Additionally, the issues of scientific interest and historical value have been presented to and considered by the Board.

It must be noted that it is the State Historical Board's exclusive responsibility to amend or repeal any existing incongruous administrative rules to conform with the following policy, as expressly authorized by North Dakota Century Code section 28-32-02. Weighing all of these considerations, the following policy is hereby adopted.

Policy Statement

From a consideration of the public testimony submitted and of additional statements made by Indian and non-Indian citizens alike, it is apparent that these ancient human beings were buried with the intent of eternal rest. Nor may we presume that, before their death, they had consented to becoming legally owned by any other individual, institution, or government. We must declare that human rights do not cease with death. The State Historical Board, in carrying out its responsibilities to all citizens of North Dakota, as mandated by its mission statement, must be faithful in protecting a fundamental human right - the right to rest in peace.

Deaccessioning of Human Remains

The State Historical Society of North Dakota shall discontinue its present practice of curation of human remains and associated grave goods with the ultimate goal of reinterment of those items under its control. To the degree that the state may be deemed under law to be "owner" of skeletal remains, the state disclaims such ownership and accepts only custodial responsibility for purposes of reinterment.

Deaccessioning shall be accomplished in the following manner:

1. Human skeletal remains and associated grave goods shall hereby be recognized as a distinct collection category. In compliance with the spirit of existing state and federal laws which generally prohibit removal, sale, and exchange of said remains and grave goods, such human skeletal remains and associated grave goods currently in the North Dakota State Historical Society's collections shall be exempt from the deaccessioning/disposition requirements provided in Section VII of the Artifact Collections Policies of the State Historical Society of North Dakota Museum Division.

2. All human skeletal remains and associated grave goods which are on loan or have been donated to the State Historical Society, or are being held thereby under any other type of agreement with other parties, shall be registered in the above-referenced special collection category. The State Historical Society shall endeavor to secure the written consent to release for reinterment of all human skeletal remains and associated grave goods from all donors and from all other parties to any type of agreement. Upon receipt of such written consent, the State Historical Society shall so notify the appropriate tribal entity, as identified in paragraphs 3 and 4 below, which entity will then physically secure the human skeletal remains and associated grave goods for reinterment on Indian lands. Upon having determined, in each instance, that it will be unable to obtain such written consent, the State Historical Society shall immediately notify the Intertribal Reinterment Committee of such failure and upon request provide said

Committee with information relative to the basis for its inability to secure such consent, which information shall include the name and address of any donor who has refused consent. In each instance wherein a particular donor cannot be located, the State Historical Society shall publish its intent to release the donated human skeletal remains and/or associated grave goods to the appropriate tribal entity for reinterment on Indian lands.

3. All human skeletal remains and associated grave goods in the possession of the State Historical Society which have, to date, been tribally identified, shall be certified as to specific tribal affiliation. The Superintendent shall immediately notify the appropriate tribal governments of the authorization to release for reinterment and restrict access to all such human skeletal remains and associated graze goods by any person, until such time as they have been physically secured by the duly designated representatives of the respective tribal governments for reinterment on Indian lands.

4. All human skeletal remains and associated grave goods, not referenced in paragraph 2 above, in the possession of the State Historical Society which have not, to date, been tribally identified, shall be immediately restricted, as prescribed in paragraph 3 above. The Superintendent shall immediately notify the Intertribal Reinterment Committee of the authorization to release for reinterment and additionally specify the volume of such human skeletal remains and associated grave goods to be physically secured by the duly designated representatives of said Committee for reinterment on Indian lands, as designated by the Intertribal Reinterment Committee.

Analysis

In conjunction with the intent of paragraphs 3 and 4 above, there shall be no further analysis conducted, to any extent or in any manner, on the human skeletal remains and associated grave goods now in the possession of the State Historical Society. In addition, the Superintendent shall take the actions necessary to ensure that all of the human skeletal remains and associated grave goods are immediately secured and restricted from access by any person.

Disinterment

No human skeletal remains or associated grave goods released and reinterred in accordance with this policy shall be subsequently disinterred by the State Historical Society.

Coordination

The Indian Affairs Commission shall be informed of all actions of the Society in carrying out these policies. The Society shall request the assistance, the advice, and the presence of the Indian Affairs Commission in working with the Tribal Councils and the Intertribal Reinterment Committee.

Definitions

For the purpose of this policy exclusively, the following terms shall have the following definitions:

LEGAL OWNER - For the purposes of this policy, the general concept of "legal owner" and/or ownership of human skeletal remains and associated grave goods is not recognized. However, the State Historical Board is compelled to acknowledge the federal legal rule that any human skeletal remains and associated grave goods that are part of a federal collection are subject to the jurisdiction and ultimate custodial authority of the United States Government. "Federal collection" shall include collections curated pursuant to contracts with the federal government or remains from federal land or otherwise belonging to the federal government.

GRAVE GOODS - shall mean that all sacred objects, which shall generally include all items known to have been interred with human skeletal remains, including, but not limited to, projectile points, knives, scrapers, articles of clothing, ornaments, beads, and religious items such as pipes, stones, dishes and pottery, feathers, and any item so identified by consultation with tribes.

DULY DESIGNATED REPRESENTATIVE - shall mean any person who is so appointed and can provide written documentation of such appointment by his/her respective tribal governing body.

ANALYSIS - shall mean any activity that requires Indian human skeletal remains and associated grave goods to be touched by any person other than the appropriate Indian spiritual leaders so appointed by their respective tribal governing.

IDENTIFICATION - shall be included within the meaning of the term "analysis."

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20 March 1987

Robert McCormick Adams
Secretary
Smithsonian Institution
Washington, D.C. 20560

Dear Secretary Adams:

On behalf of my colleagues Suzan Harjo and Karen Funk of the National Congress of American Indians, Jan Hammil of American Indians Against Desecration, Weldon Johnson of the Inter-Tribal Council of Arizona, Rick Dauphinais of NARF's Washington office and I want to thank you for hosting what we believe to have been a very frank and open meeting on the subject of the curation and display of Native American skeletal remains at the Smithsonian Institution. We hope it is the first of many such meetings.

The Native American Rights Fund represents over seventy Indian tribes from the continental United States and Alaska, on a broad range of legal issues. One of the fundamental priorities of our organization is the protection of Native American culture and religion. Thus, we are deeply concerned by the Smithsonian Institution's curation and display of Indian skeletal remains, when many of our clients and other Indian people, tribes and national Indian organizations view such activities as disrespectful of their cultural and religious beliefs and practices.

From a general, theoretical standpoint we are aware of the Smithsonian's belief that these activities hold significant scientific and educational value. In order to determine whether the divergent attitudes over curation and display can be changed - indeed, whether there is common ground between Indian people and the scientific community - we must all begin an intensive and comprehensive dialogue on these matters.

As we indicated at our recent meeting, a meeting in mid-April will facilitate that dialogue. (I just learned of the scheduled April 20 meeting.) Also, we have prepared questions set out below which, we feel, begin to give you a better understanding of the scope and depth of our interest in these issues. Realizing the questions are many, receiving answers to as many as possible before our next meeting will help us all to appropriately focus the nature of our inquiry. Please contact me if it is not possible to begin to provide answers efore the April 20 meeting.

1. What is the annual operating budget of the Smithsonian Institution?

2. What is the annual budget of the Museum of Natural History?

3. Describe in detail the sources, both private and public, of funding for the annual budget of both the Smithsonian Institution and the Museum of Natural History.

4. What amount of money, stated in actual dollars and as a percentage of the annual operating budget of the Museum of Natural History and the Smithsonian, is allocated each year to operation and management expenses of Museum of Natural History?

5. What percent of operation and management funds are: committed to existing projects? discretionary?

6. Provide copies of the Smithsonian's most recent annual budget request submission to Congress.

7. When was a decision first made to publicly display Native American skeletal materials at the Museum of Natural History? Has the decision ever been formally reviewed as a matter of institutional policy?

8. When were Indian skeletal materials first put on public display in the Museum of Natural History?

9. Please provide copies of all correspondence, documents, etc. concerning the decision to display skeletal materials at the Museum of Natural History.

10. Please state whether Native American tribes, tribal governments, or traditional spiritual leaders have ever been consulted in the design of displays in the Museum of Natural History which utilize Native American skeletal materials, or in the decision to actually display those materials. If consulted, did Smithsonian ever receive objections from tribes or others? Has the Smithsonian ever received any unsolicited objections to such display from any group, Native American or otherwise? Provide copies of all documentation which supports your answer.

11. Please describe in detail the goal, mission, objective, purpose of the Museum of Natural History. Does the

Smithsonian and/or the Museum of Natural History have any written documentation stating such goal, mission, objective, purpose, etc.? Is so, provide copies of such documentation.

12. Please describe in detail the purpose or objective for the display of human skeletal materials and the basis from which the Smithsonian and the Museum of Natural History believe these purpose or objectives are consistent with the overall goal and mission of the Museum.

a. Specifically, what scientific values are served or achieved by the public display of Native American skeletal materials?

b. And, specifically, what educational values are served by such display? Please describe these values in detail and provide any written documentation of the Smithsonian and/or the Museum of Natural History which supports your answer.

13. Has the Smithsonian and/or the Museum of Natural History ever considered the educational value of removing skeletal materials from display and substituting with models or replicas, thereby explaining to the public by appropriate means that such materials were removed to accommodate and be sensitive to the religion/cultural beliefs and objections of Native American people?

14. Does the Smithsonian Institution and the Museum of Natural History agree that such a move would possibly have educational value? Public relations value? If not, please describe why not.

15. Describe in detail the nature and circumstances under which the Museum of Natural History has been criticized by fundamentalist Christian and/or other groups espousing the religious doctrinal belief of "creationism", for explicitly or implicity advancing scientific theories of the evolution of man by its displays in the Museum of Natural History? Has litigation ever been threatened or initiated by such groups against the Smithsonian resulting from such displays and the theories they explicitly or implicitly advance to the exclusion of creationism? Please provide copies of all relevant documents. Does the Smithsonian and/or the Museum of Natural History in any of its displays explain or present information regarding the beliefs of indigenous peoples of the U.S. concerning the creation and/or evolution of man on earth? Why not?

16. When was decision made by Smithsonian Institute to begin curating and storing human skeletal materials?[1] Is

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[1] Skeletal materials are defined for purposes of this letter to include an entire intact human skeleton or any part thereof.

there any documentation affirming/evidencing such decision?

17. What is the total number of human skeletal remains curated in the Smithsonian Institution?

a. From the continental U.S.?

b. From Alaska?

c. From Hawaii?

d. From the Western Hemisphere?

e. From South America? Central America? Canada and associated territories? Melanesia? Polynesia? Micronesia?

18. For skeletal materials from the continental U.S., Alaska and Hawaii, provide:

a. By state, the number acquired each year from the date of establishment of the Institution to the present.

b. By state, the estimated age[2/] for each set of skeletal materials in the following categories:

Less than 100 years; 100 to 200 years; 200 to 500 years; 500 to 1000 years; 1000 to 5,000 years; 5,000 to 10,000 years; greater than 10,000 years.

c. For each set of skeletal materials, provide a description of the archeological "context" from which it was removed. If the context is not known, please so state.

d. For each set of skeletal materials, describe whether it was received from a federal or state agency or private source, and the circumstances under which it was discovered.

19. Please describe whether the Smithsonian ever solicited the views of Indian tribes, governing bodies, traditional spiritual leaders or elders concerning the curation and storage of skeletal materials from the continental U.S., Alaska and Hawaii? The Department of the Interior and related agencies (e.g. BIA)? Has the Smithsonian ever received any unsolicited comments or criticism from these or other sources?

20. Does the Smithsonian Institution believe that Native American claims to the religious and cultural value of

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[2/] "Age" is defined as the time from burial or removal from place of rest after death to the present date.

curated skeletal materials from the U.S. and other parts of the world are credible? If so, what is the basis for your answer? If not, why not? Do you believe the credibility of these beliefs varies with the "age" (see earlier definition) of the remains? If so, why do you believe it so varies and upon what documentation do you base your answer?

21. Describe in detail the Smithsonian Institution's position concerning the educational and scientific value associated with the curation and storage of human skeletal remains. Please provide documentation supporting your policy or position. Has said policy ever undergone a process of formal review? Has it ever been modified or amended? Has the Smithsonian ever received solicited or unsolicited comments concerning said policy from any individual or group, whether affiliated with Indian tribes or tribal groups or not?

22. What policies or criteria guide decisions to allow access of professionals to skeletal remains? Describe the "process" used; i.e.:

a. Is there a written application?

b. Is it reviewed by committee?

c. What is the average duration of a study?

23. By year since 1975, please provide the following:

a. The total number of requests from physical anthropologists or archaeologists,[3] to gain access to curated skeletal materials; the name of individual request and the institutions with which they were/are affiliated;

b. Copies of all written applications, if written applications or other means of formal/informal request are available;

c. A description of the scientific basis for access and study, if such information is not provided by written application and/or copies of such applications are physically unavailable to us;

d. The number of skeletal remains studied as part of each request; the duration of the period of access for study purpose; the geographic region of origin for the materials studied by each requestor.

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[3] Or other professionals who for scientific reasons would have a need to and be entitled to access to curated skeletal materials.

e. A description of the study methodology and scientific techniques utilized;

f. A description of whether skeletal materials were "loaned out" to the person/institution conducting the study; the duration of loan period; what assurances or procedural checks were made to ensure that loaned materials were returned in the same condition as loaned and to ensure none were expropriated (mistakenly or otherwise).

g. A description of the duration of the study; and whether the study ever resulted in the publication of an article, monograph, etc. in a professional journal.

24. Please provide a description of the Institution's understanding of the terms "lineal descendantcy" and "tribal or cultural affiliation" and an explanation of the circumstances under which the Smithsonian intends to use these criteria as a basis for determining whether to allow repatriation of curated skeletal materials originally removed from locations within the continental U.S., Alaska and Hawaii.

The following questions relate to Secretary Adams' testimony to the Senate Select Indian Committee concerning the proposed Native Cultural Preservation Act.

25. P. 1: What "moral considerations" would warrant the return of human remains and sacred materials to Native Americans? Does the Smithsonian have a written policy outlining these moral considerations?

26. P. 4: By year for the past decade, describe the number of times Native American skeletal materials or sacred objects have been loaned to other museums or institutions for display and/or study. Provide the name and address of each such institution and the time duration of the loan.

27. P. 5: Describe in precise scientific and anthropologic terms the basis for your statement that "inclusion of artifacts in graves, by itself, does not mean that such objects were considered sacred by those that buried them. . . ." On what basis do you or the Smithsonian discount the credibility of traditional Native American people who relate their sacredness as a matter of oral history and tradition?

28. P. 6: For what Native American groups did "methods of disposing of their dead. . . not involve the concept of sacredness, . . . "?

29. P. 6: Describe how "the nature of title to a particular object often. . . [can] be used to establish its religious status"?

30. P. 6: In the two instances where sacred objects were returned from the Smithsonian to Pueblo and Zuni traditional people, how long a period of time transpired between the initial request for return and the actual return of the objects?

31. P. 7: By what criteria do you judge the "quality" of the Institution's North American skeletal collection?

32. P. 8: What quantitative data do you have on which to base your statement that scientific interest in human remains "seems to be increasing"?

Thank you for your attention to this matter.

Very truly yours,

Steven C. Moore

SCM/der

cc: National Congress of American Indians
American Indians Against Desecration
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July 6, 1988

Walter G. Huber, President
Nebraska State Historical Society
PO Box 530
Blair, NE 68008

Re: Proposed Policy for Treatment of Human Skeletal Remains and Burial Goods by the Nebraska State Historical Society and Related Matters

Dear Mr. Huber:

I am writing with a three-fold purpose to follow-up on the June 24 meeting of the Board of Directors of the Nebraska State Historical Society (NSHS) regarding the above-referenced matter. First, I am formally submitting to the Board and explaining the Pawnee Indian Tribe's proposed policy on the issue, and request that it be carefully reviewed by all Board members for early adoption. Second, I am writing to formally express certain concerns and dissatisfaction which our tribal clients have experienced with the Board's policy process.on this issue to date. These concerns are offered at this time for discussion purposes in an effort to insure that there will be an adequate and fair state administrative process in considering this issue which directly affects fundamental legal rights of my clients, as they attempt in good faith to exhaust their administrative remedies before the NSHS Board of Directors. Third, I wish to briefly elaborate on two issues raised at the June 24 Board meeting, inasmuch as a full presentation by the tribal government representatives was not permitted. Because of the serious nature of the instant matter, it is critical for the Board, acting under color of state law, not to base policy upon partial, inaccurate, or misleading information, nor upon any confusion with respect to the position of the Pawnee Tribe, whose dead and associated burial goods are presently being withheld from burial by the NSHS against the stated wishes of the tribal government, duly made on behalf of the nearest next of kin.

I. THE PAWNEE TRIBE'S PROPOSED NSHS POLICY

I am enclosing the Pawnee Tribe's proposed Policy of the Nebraska State Historical Society Regarding Treatment of Human Skeletal Remains and Burial Goods, for Board member review and consideration. As you know, the NSHS has at least 100 Pawnee skeletal remains in its custody, together with associated burial goods (many of the latter of which are on public display by the NSHS).[1] Ever since the Pawnee Tribe learned of this situation a few months ago, it has consistently made formal requests for the return and reburial of tribal remains and goods. On June 24, the Board denied the Tribe's most recent request.

The Tribe's proposed policy closely parallels the criteria proposed by Executive Director Hanson, except that the scope of the policy is enlarged to apply to burial goods and to the existing collection. Under the proposed policy, human skeletal remains and burial goods reasonably identified in origin as Pawnee would be returned to the Pawnee Tribe for reburial, if requested. The policy applies to the existing NSHS collection, as well as to human remains and burial goods that may come into NSHS control in the future.[2]

The Tribe's enclosed proposal represents a significant compromise made by my client in the course of these protracted and expensive negotiations with your state agency, that is fully supported on legal, ethical, religious, moral and scientific grounds. As you know, the Pawnee Tribe's original position on this controversy, as reflected in LB 612, as revised on 2/8/88, called for the mandatory reburial of all Indian skeletal remains and burial goods in the control of the NSHS.[3] The instant proposed policy now seeks reburial of, in effect, only 20% of the collection, according to Director Hanson's most recent estimate. Accepting that estimate for the present, which will be subject to later tribal scrutiny and confirmation, then only 20% of the NSHS collection is identifiable to any tribe; if that estimate is ultimately proven accurate, then the NSHS would retain 80% of the Indian bodies and associated burial goods under the proposed policy. In other words, the Pawnee Tribe has significantly compromised 80% of its claim against the NSHS in an effort to reach agreement with the State. In the same vein, when considering a compromise solution, it is also important to remember that the NSHS has apparently had these objects for many years and has already conducted numerous scientific studies of them. Over the years, the NSHS has also put on public display, and continues to do so, Pawnee burial goods without the Tribe's knowledge or consent. As such, any legitimate scientific interest in these remains asserted by the NSHS has already been materially served and return for reburial can now be considered consistent with that interest, if the NSHS truly wishes to meet the Tribe half-way in a good faith compromise solution. If the Board were to continue to assert absolute, permanent and unfettered control under these circumstances, it would be extremely difficult for the Tribe or anyone else to find any resemblance to a compromise on this matter on the part of the State.

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[1] Despite the claimed "importance" of the Pawnee "specimens" by NSHS archaeology staff, they do not appear to know how many remains are in fact in the collection. This is a basic fact which we intend to discover. Director Hanson first advised the Tribe on March 17, 1988 that the NSHS has between 500 to 1,000 Pawnee bodies, but now asserts that there are only 100 Pawnees out of a total of "about" 500 persons. This 500 total now differs significantly from the 500-1,000 total he represented to Senator Chambers in a December 2, 1987 letter. In May we retained expert researchers to clarify this and other facts, but they have not yet been permitted direct access to NSHS records.

[2] The Hanson proposal of June 24 is more limited in scope, because it exempts both burial goods and the existing collection.

[3] The ground for that original position was that the Pawnee Tribe and its confederated bands are the aboriginal inhabitants of present-day Nebraska from time immemorial up until the Fall of 1875, when the Pawnees were entirely removed (Continued on next page)

In evaluating the Tribe's proposed compromise policy, it should be helpful for Board members to fully understand and appreciate the basis for the policy, which is set forth below. In my own experience, I have observed a strong inclination and sense of fairness on the part of state officials and other non-Indian citizens to do the "right" thing after they have become fully informed with respect to American Indian issues, which are typically not well-understood by the general public. The appropriate treatment of Indian skeletal remains and burial goods is no exception, as is illustrated by the recent legislation enacted by 13 other states on this issue, after

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3/ (Continued from previous page) from the State of Nebraska. The presumption was, and continues to be, that any identifiable Indian graves, village sites and cemeteries located within the Pawnee homeland during that time frame are Pawnee in origin unless conclusively demonstrated otherwise with clear and convincing evidence by individuals, corporations or societies claiming a legal right to permanently withhold proper burial of those remains and goods. *See e.g.*, 25 U.S.C. § 194.

consultation with American Indian tribes and communities.[4] This includes the State of Iowa which, pursuant to state law, has been returning Indian skeletal remains and burial goods to tribes upon request since the 1970's, as well as the recent (May, 1988) return of skeletal remains to tribes by the North Dakota State Historical Society whose director emphasized the return was "simply the respectful handling of what had to be done."

Quite simply, in the last 15 to 20 years, society has been rethinking its attitudes and mores toward this issue, which was once within the exclusive and unquestioned purview of the discipline of archaeology--a discipline with obvious self-interests in Indian remains. Today, society in general, and indeed a significant part of the scientific community, is acting in a more responsible manner to protect legitimate American Indian interests in their own dead in the same way that society has always protected the rights of other citizens on this same subject.[5] In consideration of the foregoing, I

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[4] I presume that these statutes, which were mailed to Director Hanson by our office on May 10, 1988, at his request, have been supplied to Board members to assist in evaluating this issue. If not, I am happy to supply these statutes, which represent modern day social policy, to Board members on request.

[5] In the interest of bringing this point of view to light, I am attaching for your review and consideration a copy of a paper entitled "Sacred Objects, Burials and Museum Collections," authored by Professor Linda B. Robertson during her tenure as an archaeologist/ethnologist at the Museum of Man of Wake Forest University. The major theme of Professor Robertson's paper is that the 19th and early 20th century rationale for acquisition and retention of religious objects, including human skeletal remains and burial goods, may no longer be valid, considering that such was initially and largely done to record and preserve the history of tribal cultures in light of now antiquated and erroneous predications of the death of American Indian tribal cultures. Professor Robertson states: "In such a climate, it is not surprising that religious items were collected that were never meant to leave the hands of that religion's believers. Collection of such objects and nineteenth century ethnological practices in clear violation of the host society's religious rules were not seen as reprehensible in the 19th century." In light of the fact that tribal cultures continue to thrive, Professor

(Continued on next page)

present herewith a brief outline of the legal, cultural, religious, spiritual, moral, ethical and scientific bases for the policy proposed by the Pawnee Tribe.

A. The Legal Basis for the Tribe's Policy

The Tribes' proposed policy is amply supported, if not mandated, by the common law of dead bodies and the law of sepulcher. This body of law, which originated in England to protect Man's deeply ingrained respect for the dead, was adopted by American courts long ago and serves to protect American

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[5] (Continued from previous page) Robertson goes on to state: "A more complete understanding of why collecting religious items was objectionable, combined with the relativistic notions that the objections were valid if the culture's members believed they were valid, made such collection unethical in anthropological terms. The religions in question were no longer seen as doomed fossils on a progressive ladder and grist for our own historical mill but living vital properties that belong to someone else." Professor Robertson acknowledges that the study of such religious materials has provided important information for researchers, but suggests that the continuing need for such study must be balanced in the decision-making process with the associated costs, including the continuing violation of the religious freedom rights of the living people and cultures whose ancestors are subject to such study. Robertson concludes: "Museum anthropologists cannot afford to ignore the contradictions inherent in the keeping in storage of religious paraphernalia or human remains from conservative and long-lived cultures whose current members tell us unequivocally that it is wrong to do so. American Indian cultures did not die in the early 20th century, nor have they since, and many groups' cultural integrity and religious beliefs remain vital forces. When the logic of our profession's current principles comes into conflict with the practices of our past, I would suggest that we look for guidance to the intentions of the most far-sighted of our founders, rather than to the methods chosen as appropriate to the America of the late 19th and early 20th centuries. Our museums must live in the 1980s--it is proper that our behavior reflect it. While it is indeed our job to look at the past and present it in our educational offerings, and certainly anthropology's past is fair game in this enterprise, we are not under obligation to continue to live that past."

Indian people just as it has always done for white people.[6] The legal rights, responsibilities and liabilities established by this body of law are familiar ones that can be briefly described: There is no "property right" in a dead body recognized in the law that the NSHS can claim. Rather, there exists only a right to control disposition of a dead body in the nearest next of kin or, if they be unknown, a court of equity for burial, grave protection and removal or reinterment purposes.[7] Once suitably buried, a dead body and associated burial goods go into the custody of the law, and may thereafter be disturbed or removed only if done in accordance with the law.[8] Actions for injunctive relief and damages will lie for wrongful disinterment, retention and possession of dead bodies and burial goods. Such actions have been sustained in innumerable cases regardless whether the identities of the deceased are specifically known, or whether the plaintiff may have an ownership interest in the land that contained the remains.

Court decisions applying the above rules are replete. Even though the cases generally involve non-Indians, it would be a serious error to believe that these same rules and protections do not apply with equal force to American Indians and their dead and associated burial goods. For example, in NARF's recent case entitled Charrier v. Bell, 496 So.2d 601

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[6] In Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70, 80 (1955) (Black J., dissenting), the Supreme Court strongly intimated that a state's denial of rights to sepulcher to American Indians under color of state law can also raise serious questions "concerning a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment."

[7] Under these rules of law, the Pawnee Tribe has the superior legal right to control the disposition of Pawnee dead vis-a-vis the NSHS, as is contemplated by the Tribe's proposed policy. This principal is also recognized in Director Hanson's proposed policy, but only for future purposes. However, no rational basis exists or has been advanced for drawing a line between the present collection and future acquisitions, as done by Director Hanson.

[8] To our knowledge, none of the Pawnee remains were disinterred or removed in accordance with Nebraska statutes in existence at the time, done with notice or consent of the Pawnee Tribe, or done under the direction of a court. However, we plan on obtaining and have requested all of those facts from your agency.

(La. App. 1 Cir. 1986), cert. denied, 498 S.2d 753 (La. 1986), we represented the Tunica Indian Tribe in an action brought by an amateur archaeologist in state court to quiet title to burial goods dug up by him from 150 Tunica Indian graves.[9] The graves were about 250 years old and were located on private land which bore no resemblance to a cemetery at the time they were excavated. Even though the specific identities of the deceased were unknown, it was clear that they were Tunica Indian graves interred "with their earthly possessions for use in the spiritual hereafter."[10] The court held that the burial goods belonged to the Tribe stating:

> They were burial goods then and they remain burial goods today, whether they are referred to as artifacts, funerary offerings or the "Tunica Treasure."
>
> . . . [We] cannot agree that ownership of such objects may be acquired by reducing them to possession and over the objections of the descendants of the persons with whom the objects were buried. Reason dictates that these objects, when and if removed, rightfully belong to the descendants if they be known and for such disposition as the descendants may deem proper. We hold accordingly.[11]

The Court ruled in the Tribe's favor despite claimed scientific values similar to those now raised by certain NSHS staff members, stating:

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[9] Specifically, Charrier:

> . . . excavated approximately 150 burial sites, containing beads, European ceramics, stoneware, glass bottles, iron kettles, vessels and skillets; knives, muskets, gunflints, balls and shots; crucifixes, rings and bracelets. The excavated artifacts are estimated to weigh two to two and one-half tons.

496 S.2d at 603.

[10] Id., Civ. No. 5,552 (20th Jud. Dist. La., Mar. 18, 1985) (Trial Court Slip Opinion p. 11).

[11] Id. at 11, 12-13.

> In some quarters, Charrier's discovery is viewed as an archaeological find of considerable significance. To others it is viewed as the systematic despoilation of . . . [the Tunicas] ancestral burial grounds. While we can fully appreciate the former view, it cannot override the equally considerable merit we find in the latter view.[12]

In sum, the Tribe's proposed policy is firmly anchored in law.[13] The policy, if adopted by the Board, would therefore be consistent with relevant legal rights, responsibilities and liabilities.

B. The Cultural, Religious, Spiritual and Moral Basis for the Tribe's Proposed Policy

As Pawnee Tribal Chairman Goodfox stated to the Board in his letter and presentation of June 24, 1988, the proposed policy of the Pawnee Tribe is a policy that is firmly based upon the long-standing cultural and religious traditions of the Pawnee Indians, as well as upon Western notions of civilized decency. These factors are ones that should be taken to heart by the Board when considering the attached policy, because the issue should be resolved based upon the simple notion that the decendants of the Indian people sought to be studied by the NSHS are members of living cultural communities entitled to respect and dignity by the NSHS.

Humanity has always buried its dead with varying degrees of religion, ritual, reverence, and respect. Sanctity of the dead and their final resting place is not the exception to the rule, as some archaeologists would have us believe. On the contrary, these values are deeply ingrained in Western civilization and social mores.[14] The religious and cultural traditions of the Pawnee Indians, past and present, are no exception to this widely-held belief system, and there is no reason why their values should somehow be entitled to less respect and protection than similar values of other races or cultures in Nebraska or the United States.[15] Indeed, as Chairman Goodfox stated to the Board in Ft. Robinson, the Pawnee Tribe in anticipation of the return of their dead and burial goods, has already designated a burial site in Pawnee Indian Country in Oklahoma and is now planning a reburial ceremony.

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[12] Id. at 14.

[13] See also footnote 18, below.

[14] The common law principles discussed earlier embody and protect these deeply ingrained attitudes which are shared by most people. We also submit for your consideration that the efforts of members of the Pawnee Tribe and the Pawnee tribal government to realize the return of their dead and associated burial goods are no different than, i.e., are materially (Continued on next page)

In an effort to fully inform the Board about relevant Pawnee religious and cultural traditions, tribal elders and representatives have traveled from Oklahoma to Nebraska on numerous occasions in recent months to meet with the NSHS Board and staff.[16] To supplement that process, we have

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[14] (Continued from previous page) identical to, the current, persistent efforts of relatives of deceased Vietnam war veterans, and indeed the United States government, to secure the return of their loved ones whose remains are either thought to be or known to be held in Vietnam, in order that proper and lasting burial or reburial may take place in accordance with the wishes and beliefs of the relatives of the deceased. Similarly, the Pawnee Tribe's request is consistent with the recent return by the Canadian government to the United States of the remains of 28 American servicemen killed in Canada while fighting in the War of 1812, for proper reburial with the requisite military procession and honors in accordance with American customs, practices, and traditions, notwithstanding the fact that these remains were apparently unidentifiable as to descendants.

[15] Such disparate treatment, of course, would constitute an ethnocentric bias at best--assuming that the treatment stemmed from simple unfamiliarity with the Pawnee Indian belief system. While such an attitude may be found in certain elements of the lay public, the NSHS, a state institution and museum charged with preserving the history of the state, should be held to a much higher standard of knowledge and sensitivity. At worse, such disparate treatment could constitute racial discrimination if done with requisite knowledge and invidious intent.

[16] Despite that exhaustive and expensive good faith effort, our clients are concerned that the Board may still be basically unfamiliar with the basic tribal traditions which are at issue, and that NSHS staff, if any, who may be familiar with these traditions, have failed to recognize or accord them any weight in the policy process to date.

commissioned and enclose a brief, limited scope historical paper in draft form entitled "Pawnee Mortuary Traditions," which summarizes published and unpublished historical and ethnographic data for Board member review. The paper contains no analysis or interpretation of the data, but merely recounts recorded facts and information that describes some of the basic features of the Nebraska Pawnee belief system when they interred the dead who are now being withheld by the Board. The Pawnee belief and practice system described in the paper continues to be followed today by tribal members in all significant respects, and the Pawnee Tribe stands prepared to continue to provide further information for interested members of the Board upon request.

"Pawnee Mortuary Traditions" shows that the Pawnee belief and practice system with respect to the dead may not differ significantly from those of mainstream American society in many important respects. If so, perhaps you can better understand the perspective of the Tribe; if not, I hope you can at least respect different cultural beliefs and practices and accord them the same weight as you do to your own--as is required by law when acting in your capacity as a state official. Briefly summarized, "Pawnee Mortuary Traditions" shows that Pawnee interments were highly emotional and religious matters; that human remains were consecrated in specific ways and thereafter considered sacred objects; that burial goods were placed in, on, or near the graves as spiritual gifts for use of the deceased in the afterlife; that cemeteries and graves were intended to be permanent, final resting places for the dead; and that special duties and relationships exist between the spirits of dead Pawnees and living Pawnees.

It is self-apparent that all of these basic features of the Pawnee belief and practice system are fundamentally violated on a massive scale where at least 100 Pawnee bodies and associated goods have been disturbed, as has been done in the instant matter. That is why members of the Pawnee Tribe have experienced extreme mental anguish since they recently learned several months ago of the wholescale desecration of their cemeteries in Nebraska and of the refusal of the NSHS to return these bodies and associated burial goods to the Tribe for proper burial in accordance with tribal religious tradition. In explaining this matter to NSHS representatives on numerous occasions, the Pawnees have become perplexed about the apparent difficulty in understanding what we thought were basic human values shared by all cultures.[17] Hopefully, "Pawnee Mortuary Traditions" can begin to lead to more meaningful understanding and sensitivity on an issue where such knowledge is vitally important.

The policy proposed by the Tribe merely seeks to incorporate what it believes are universally held human values into the NSHS as a matter of policy. Moreover, the Tribe's policy is necessary and desirable to protect the religious and cultural traditions of the Pawnee Tribe from unnecessary infringement by actions of the NSHS done under color of state law.[18]

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[17] Some non-Indians may ask why Pawnee Indians are so upset over this issue. In response, all I can say is that all cultures we are familiar with share these same values in varying degrees, and that these values may be more important comparatively in American Indian culture and religion. Nonetheless, we wonder what the reaction of these same non-Indians would be if their own sepulcher rights were treated in the same way and on the same scale as those of the Nebraska Pawnee--something which has never and would never happen, of course, because of the strictly enforced anti-grave robbing and mutilation statutes that seem to apply to all races except American Indians.

[18] "Pawnee Mortuary Traditions" and Chairman Goodfox's letter and presentation to the Board at Ft. Robinson make clear the fact that the Pawnee Tribe and its members have specific religious duties to respect and honor their dead through the proper tribal reburial of the remains of their ancestors and their burial goods. Withholding their human skeletal remains and burial goods deprives the Tribe and its members from the free exercise of their spiritual beliefs and religion. It is the Pawnee Tribe's position that the First and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Nebraska are directly implicated here by the clear abridgment of those rights by the NSHS. Accordingly, this controversy takes on constitutional dimensions, as well as the common-law dimensions discussed above. Considered in this constitutional context, the Society must determine whether, on balance, the adoption of a policy or law which would, in effect, prohibit the free exercise of religion by members of the Pawnee Tribe can be constitutionally justified and sustained, when such prohibition under color of state law would be carried-out allegedly under the generalized mantle of science, yet, in fact, add very little to the comprehensive, long-standing body of information already on record.

C. The Ethical and Scientific Basis for the Tribe's Policy

The NSHS is a state institution charged by law to educate the public on the history of the State and to preserve the past through museum services. In carrying out these duties, the NSHS need not violate or offend the religious and cultural traditions of the very Native cultures which NSHS seeks to study or to preserve. Moreover, it should be possible and relatively easy for the NSHS to effectively convey to the public valuable information concerning the State's indigenous tribes without offending their religious beliefs or cultural integrity in the process. These assumptions, upon which the Tribe's proposed policy is based, are fully supported by ethical grounds that define appropriate limits and methods in the scientific study of other cultures. Moreover, aside from these paramount ethical considerations, there has been no empirical showing made by the NSHS of any measurable harm to any specific scientific interest in the Pawnee remains, which have been previously studied a number of times, in the event that the remains and burial goods are reburied.[19]

According to the Principles of Professional Responsibility (1971)of the American Anthropological Association (AAA):

> In research, an anthropologist's paramount responsibility is to those he studies. When

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[19] For the last several months, the Pawnee Tribe has requested a specific, empirical showing of the remaining scientific value in the NSHS Pawnee remains--something which no one at the NSHS has been able to verbalize. Instead, all we have heard are: speculation as to possible, unnamed future uses; glittering generalities (such as "I don't believe in book burning"); and conclusory allegations of overriding scientific importance without any supporting facts to enable anyone to evaluate the validity of the claimed importance. The Tribe and the public are entitled to a far more specific and compelling showing of any remaining "overriding" scientific interest, if one indeed exists, where fundamental rights are at stake. Moreover, if the remaining scientific value in these specific remains cannot be articulated by anyone at this late date, it should be obvious that such value is marginal, cumulative, or non-existent, because no scientific value sufficient to overcome the legal, cultural and religious rights of the Pawnee people is self-apparent after all these years of prior scientific studies of these remains.

> there is a conflict of interest, these individuals must come first.

Archaeology is a sub-discipline of anthropology which also prescribes ethical responsibilities to living descendants in the Code of Ethics of the Society of Professional Archaeologists (SOPA):

> An archaeologist shall . . . be sensitive to, and respect the legitimate concerns of, groups whose culture histories are the subjects of archaeological investigations.

The Tribe's proposed policy embodies these ethical responsibilities by mandating the return of remains and burial goods to identifiable tribes and groups upon request. The same is true of Director Hanson's proposed policy--but only for future remains as may come into NSHS control.

As to the existing NSHS collection, which is the only issue of dispute before the Board, the Tribes perceive that some NSHS staff have placed their own self-interest above the best interests of those whose culture history they seek to study. Those persons must therefore be in a conflict of interest situation, as defined by AAA and SOPA ethical standards quoted above. For example, in arguing against the Pawnee request for the return of its dead and their burial goods at the June 24 meeting, one archaeologist in effect said, "I went to school to study remains, and if these Pawnee remains are reburied then I will be unable to practice my chosen profession." This person, in an apparent conflict of interest, was obviously placing his own personal self-interest above the best interests of the people and culture he wishes to study--something apparently proscribed by the language of the above-quoted professional responsibilities and standards. The Tribe's proposed policy avoids potential ethical problems of this nature whereby an entire Indian nation's legal, religious, and cultural interests could theoretically be abridged in future circumstances merely to serve the personal self-interest of one archaeologist who may be in a conflict of interest position. We believe the Tribe's proposed policy is fully justified by reason of the large number of Indian remains in the NSHS collection, the exclusive non-Indian racial composition of the NSHS, and the difficulty which we have observed on the part of the staff in according proper weight to legitimate Indian interests, where that may affect their own professional interests. These factors suggest a strong potential for undesirable ethical conflicts in this sensitive area which the Tribe's policy strives to avoid and to resolve on a NSHS policy level.

The AAA and SOPA ethical responsibilities were adopted by the scientific profession to provide guidance in the study of other cultures for extremely important reasons, and there is no reason why they should not be mandated by NSHS policy. Ethical breaches can cause a host of highly undesirable consequences, as the handling of this issue by the present NSHS administration has sadly demonstrated. For example, as you are aware, the Omaha Tribe has officially declared a moratorium on all future dealings with the NSHS. Moreover, the NSHS has caused widespread and extreme emotional distress among the Pawnee people--not only because of the refusal to rebury identifiable Pawnee Indians and burial goods needed by the deceased for use in the spiritual hereafter, but also because of the insensitive manner in which this matter has been handled by staff who we believe are in clear conflict vis-a-vis the standards of their very own professional societies.20/ The NSHS should be deeply concerned about the complete alienation of the indigenous tribes of Nebraska--not only because they represent living cultures and people who possess valuable information for historical study, but also because the Tribes ought to feel welcome to enjoy complete satisfaction from the historical endeavors of the NSHS to the same extent as the public at large.

Finally, the Tribe's proposed policy harms no remaining overriding scientific interest in the Pawnee remains and burial goods that the NSHS staff have been able to articulate. Because of the serious and fundamental nature of the Tribe's interests that are at stake, neither it nor the Board can afford to accept generalizations and speculation on this point. These specific remains and burial goods have already been subjected to numerous studies for many years. No one at NSHS can or has verbalized or articulated what continuing scientific importance in these remains and burial goods outweighs the legitimate religious interests of the Pawnee people. Given enough time, I presume that someone can think of something specific to say about the claimed scientific interest so that its purported validity can be assessed and

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20/ Public remarks which label the legitimate claims of the Pawnee Indians as "bookburning" or a "raid" upon "property" of the NSHS, as well as disparaging private remarks to scientists of other states (who are attempting to live up to the AAA and SOPA ethics) branding them as "sellouts" or "caving in," demonstrate insensitivity and ignorance to my clients who can only interpret such extreme attitudes as ones that are generated from extreme self-interest or classic conflict of interest on a professional and/or personal level.

argued. However, the failure to be able to advance a single specific reason after all this time strongly suggests that the Tribe's proposed policy will not significantly impair any legitimate, overriding scientific interest in the remains or goods that cannot be served by the NSHS in any other alternative way than by withholding them permanently from proper burial against the Tribe's wishes. In sum, the Tribe's policy, if adopted by the Board, will be fully supported by scientific ethics and will not result in measurable harm to any specifically identifiable scientific interest of the NSHS.

For all of the above reasons, the Pawnee Tribe of Oklahoma respectfully requests early adoption of the attached proposed policy by the NSHS Board at the October 8, 1988 NSHS meeting in Lincoln.

II. DISSATISFACTION WITH THE NSHS ADMINISTRATIVE AND POLICY PROCESS AND RECOMMENDATIONS TO CORRECT PERCEIVED PROBLEMS

The Pawnee Tribe remains fully committed to working in good faith with the NSHS Board in developing a policy on this difficult and sensitive issue, before going to other available forums, if the NSHS process is going to be a timely, fair and impartial one. We have recommendations to help ensure such a process which are presented below. Also, there does exist tribal concern and dissatisfaction with the process we have experienced to date, which I present now in order to give the Board the full opportunity to consider and possibly correct potential problems early on.

Briefly summarized, there are five reasons why the Pawnee Tribe and other tribes are deeply concerned that the NSHS policy process may not result in a fair and objective policy on a matter involving fundamentally important tribal interests. These facts and perceptions are listed below for Board review and consideration.

A. Denial of Direct Research Assess to NSHS Facts and Records Concerning Indian Remains and Burial Goods

Last spring, the Tribes requested research access to NSHS records to acquire baseline facts necessary to continue negotiations, but were denied. A compromise unsatisfactory to the Tribes was demanded whereby NSHS staff retain control over what facts and information shall be shared and when they shall be shared. We still do not have the requested facts and do not know when NSHS staff will: 1) supply responses to our research questions; 2) compile records they feel we can view; or 3) permit direct access to the files so compiled.

B. Failure of the NSHS Policy Committee to Solicit Indian Input Prior to the June 24 Meeting

Though the Committee solicited comments prior to the June 24 meeting regarding the issue, it solicited them exclusively from only that segment of the scientific community that supports retention, and did not likewise solicit Indian comments. All legitimate interests should be similarly solicited and given full consideration.

While I did talk with Policy Committee Chairman Hart prior to the Ft. Robinson meeting regarding the policy input process, Mr. Hart advised me that all input was to be sent directly to Mr. Hanson. Given Mr. Hanson's publicly avowed opposition to the tribes in this matter and his repeated refusal to accord good faith consideration to the legitimate interests of the tribes,21/ the Pawnee Tribe chose to go directly to the Board itself to avoid futility and concomitantly, to seek a full, fair and impartial hearing.22/

C. Intent of the Board Only to Consider One Viewpoint on the Issue from the Scientific Community, When Scientists Themselves are Sharply Divided Over the Issue

There is a long-standing, marked and sharp division among the peers in the scientific community regarding this issue, but nonetheless the Board has thus far solicited only one conservative viewpoint from persons who in large part have

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21/ Mr. Hanson, in addition to his proposed policy and statements to the press, has told us numerous times that "nothing will leave the Society's collection" under his tenure.

22/ The obvious confusion that Policy Committee Chairman Hart's proposal and the Hanson proposal were perceived to be one and the same was indicated by the fact that Committee Member Leubke found it necessary at the Ft. Robinson meeting to publicly disavow the Hanson policy as the Committee policy, even though Professor Leubke subsequently acknowledged and stated that the policy "was prepared by Director Hanson under the direction of [Policy Committee Chairman] Hart."

personal self-interests at stake in the Pawnee remains.[23] Equally important, it appears that the Board plans only to hear the views of Dr. Owlsley in the future. Dr. Owlsley not only so happens to share this same school of thought, but he has perhaps the most self-interest of all at stake: He currently has all of the Pawnee bodies on loan from the NSHS collection for his own unspecified use. Moreover, he has already gone on public record in Nebraska and elsewhere opposing the return of Indian remains and burial goods, by lobbying Nebraska Senators, in effect, opposing LB 612, etc. Unless NSHS policy-makers will obtain additional, competing points of view from the scientific community, it will merely obtain and corroborate a dangerously skewed view of the issue that is out-of-step with the growing trends in the scientific community. Who selected or hand-picked these particular scientists for input and why are only the views of scientists who already have gone on public record against tribal interests the only views that are considered "valuable" and "expert" by the Board?

D. Board Procedures Employed at the Ft. Robinson Meeting

The Board undertook certain procedures at the Ft. Robinson meeting which served to minimize meaningful Indian input in consideration of this issue. These include: (a) last-minute agenda changes at the June 24 meeting so that decisions were made before Indians were allowed to speak; (b) the interruption of the Pawnee Tribe's presentation, including Chairman Goodfox's plea and my comments which were cut short; (c) stacking the presentation by inviting full statements of all archaeologists present (after receiving a note from Director Hanson), while failing to extend the same courtesy to representatives of the Omaha Tribe, Winnebago Tribe and the Nebraska Indian Commission, a sister state agency.

E. Fear of Predisposition and Prejudgment

For all of the foregoing reasons, and because of the obvious influence exerted over the Board by staff who have already publicly and privately stated their opposition to the tribes in this matter, we fear that the Board is predisposed to adopt an inadequate and insensitive policy, like that or similar to that submitted by Director Hanson on June 24, 1988.

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[23] At the June 24 meeting, Mr. Ludwickson acknowledged this split in the scientific community. However, he mistakingly told the Board the split was 99%-1%--99% being in favor of retention with only 1% supporting repatriation. Mr. Ludwickson's figures are highly inaccurate. Our expert sources tell us the split on the national level is 75-25 in favor of retention, while in the west, exclusive of California, the split is 50-50. Moreover, our expert sources have indicated that the trend is advancing toward repatriation.

In light of the above facts and perceptions, the Tribes have a great deal of skepticism which I am sharing with you now, as to whether the NSHS intends to, or in fact can, conduct a fair, impartial, and full hearing process necessary for the adoption of an acceptable, sustainable human remains and burial goods policy. However, in consideration of the successful motion to consider all points of view, passed after the Policy Committee report on June 24, the Pawnee Tribe will continue to pursue its remedy through the administrative route made available to it by the Board up to and including the October 8, 1988 NSHS meeting, by continuing to work in good faith with the NSHS Board for the adoption of the reasonable, compromise policy the Tribe now recommends.

In the interests of implementing the Board's decision to consider all points of view and to address some of the tribal concerns stated above, the Pawnee Tribe recommends that the Board do at least the following: (1) secure the participation of a representative member of the scientific community who supports repatriation and has no conflicts of interest by inviting such expert or experts and pay his or her fees and expenses to attend the October 8, 1988 meeting, the same as we presume the Society will do to bring in Dr. Owlsley; (2) in the same way comments were solicited from the scientific community in support of retention, solicit comments from the Pawnee, Winnebago, Omaha and Santee Sioux, Iowa, Sac and Fox, Otoe-Missouria, and Ponca Tribes, any other tribes which historically resided in Nebraska which may have identifiable living descendents, the Nebraska Indian Commission, and representative scientists who advocate repatriation; and (3) allow and foster full and fair debate of the issues in accordance with routine procedures and principles of full notice and hearing normally associated with the NSHS administrative process.

If our recommendation for input of other members of the scientific community who have differing viewpoints that are free from self-interest or conflicts of interest has merit to the Board, I am able to provide expert references for interested Board members. I would sincerely hope that the Board desires to understand the basis and scientific justification for repatriation. Please contact me soon if you desire any of this assistance prior to the October 8, 1988 meeting so that the scientific experts will have ample time to supply the Board with comprehensive viewpoints of the scientific community on the issue.

III. CLARIFICATION OF TWO ISSUES RAISED AT THE JUNE 24, 1988 MEETING IN FORT ROBINSON

In order to ensure that there is no confusion as to the issue that is before the Board and to avoid any misunderstanding about the intentions of the Pawnee Tribe, two points raised at the June 24 meeting should be clarified for the Board's convenience. First, there has been no "compromise" whatsoever, nor any inclination to compromise, made by NSHS staff on the specific issue that is before the Board. The only concessions that have been made are the significant tribal compromises, discussed above and amplified below. Second, the Pawnee Tribe did not intend to "threaten" the Board at the June 24 meeting when we indicated that the Pawnee Tribe will, as part of a comprehensive strategy, apply for legislative or judicial relief if its administrative remedy before the Board proves unsuccessful. If any Board members perceived that candid statement of the Tribe's comprehensive approach to the instant controversy to be a "threat," then that is truly unfortunate and regrettable, for such was not intended. Nothwithstanding the potential misinterpretation of our statements to the Board, it is nonetheless important for the Board to fully understand and not underestimate the gravity of this matter to the Pawnee Tribe, as the Board continues to consider this issue. Likewise, it is important to keep in mind that the policy the Board finally adopts will constitute the official conduct of the State of Nebraska.

A. The Call for Compromise

Several members of the Hanson team stated at the June 24 meeting that they had "compromised" in this controversy, presumably on the grounds that they have collectively agreed not to excavate burial sites in the *future* and that they would support the return of identifiable remains to respective tribes upon request which may come into the Society's possession in the *future*. Of course, the *quid pre quo* for this alleged "compromise" is the provision that all remains and burial goods in the Society's possession at *present* shall remain there. In effect, the Hanson group represents as their "compromise" the "commitment" not to proactively seek burial remains and goods in the *future*, and to return *future* remains which may come into the Society's possession. These "compromises" constitute the basis of the proposed policy which the Hanson group now recommends the Board adopt.

In light of these "compromises," several members of the Hanson group called on the tribes at the June 24 meeting to also compromise, presumably by meeting them "halfway," by foregoing completely their outstanding requests for the return of the identifiable remains and burial goods presently stored in the Society's collection. However, a careful examination of the history of this controversy clearly reveals that the "compromises" of the Hanson group, and hence their proposed policy, do not in any manner whatsoever represent any mutual concessions or compromises on their part. On the contrary, the record plainly indicates that the Pawnee Tribe has met the Hanson group more than halfway, and significantly so, and that the Pawnee Tribe has already conceded essentially everything it can with respect to its cultural, spiritual and religious beliefs and practices.

1. There Is No Controversy Over Burial Site Protection or Future Remains Matters

It is important to keep in mind that the controversial policy issue now before the Board is, and indeed has been all along, the disposition of present remains and burial goods in the Society's possession or control. Unless we have been seriously mislead, there simply is no controversy, nor has there been one, regarding the future excavation of burial sites or the treatment of human remains acquired in the future. In sum, there are three primary reasons the Board should not be misguided into thinking the Hanson proposal represents a "compromise" on the issue before the Board.

First, Director Hanson has represented to us all along that the Society ceased the intentional, proactive digging of Indian burial sites as long as 15-20 years ago, and has no interest in doing so in the future. Accordingly, it is obvious that the Society has a long-standing administrative practice of nearly two decades of not digging Indian burial sites, and hence, not prospectively seeking Indian remains or burial goods. Such a long-standing administrative practice, in effect, amounts to a de facto policy, notwithstanding whether it has been adopted pursuant to formal Board action.[24]

In fact, Executive Director Hanson gave us a copy of an NSHS "policy" earlier this year which, according to him, was prepared by the staff and was to address the future remains issue. That policy stated, in relevant part, that "[i]t is [the NSHS] policy to avoid the exhumation of human skeletal remains. . . ." It also provided for the return of identifiable skeletal remains acquired by the Society in the future to respective tribes upon request. Significantly, Mr. Hanson stated this policy was prepared prior to the LB 612 controversy, but was initially considered and tabled by the

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Second, neither Mr. Hanson nor his team could lawfully advocate, aid, incite or assist, or even encourage the intentional future exhumation or removal of dead Indian bodies or burial goods from their places of burial in Nebraska. Any such activity is flatly illegal and clearly prohibited pursuant to Nebraska statutory law §28-1302. Foregone activity that is already proscribed by law can hardly be viewed as a compromise or concession. A third reason makes it further apparent that the Hanson policy is not a real concession at all: Our preliminary research suggests that the vast majority of the identifiable Pawnee graves have already been dug up and have already been expropriated by the NSHS.

In light of the above, it is disingenuous and, therefore, potentially misleading to the Board for the Hanson group to suggest that their proposed policy represents a "compromise." If the staff persists in presenting misleading, disingenuous arguments to the Board on what amounts to non-issues, the Board is not going to be materially aided in considering a difficult issue. Rather the Board, and therefore the public at large, as well as the State of Nebraska will be materially disserved.

Compromise means "a settlement of differences by mutual concessions," according to the Random House Dictionary. It stands to reason that compromise is necessary, or possible, only where there are divergent points of view on an issue, *i.e.*, where a real controversy exists. Here, as to the future burial site and related remains matters, there is no controversy.[25] Each side shares an identity of interest regarding this area and the only matter pending on that issue is to complete and support draft legislation which the parties have been jointly pursuing. Simply stated, contrary to what they contend, the Hanson group has compromised nothing on the policy issue before the Board. All that can be said about the

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[24] (Continued from previous page) Board shortly after LB 612 was introduced, pending the final outcome of the legislation. Also significantly, but not surprisingly, this policy is strikingly similar to the latest one the Hanson group now urges the Board to adopt.

[25] Certainly this lack of controversy is further evidenced by the fact that the Hanson group and tribes have successfully formed a Writing Committee to propound legislation which would statutorily protect unmarked and/or undisturbed burial sites. To our knowledge this process is proceeding smoothly with only technical, minor differences to be resolved.

Hanson group is that they have agreed to continue to abide by the longstanding practice and _de facto_ policy of the NSHS, and to abide by the statutory law of the State of Nebraska.

2. _The Only Real Issue in Controversy Is The Disposition of the Present Remains and Burial Goods Held by the NSHS_

To hold out the Society's long-standing practice and _de facto_ policy of not searching for more Indian remains and, therefore, burial goods, particularly in light of Neb.Stat. §28-1302, as a "compromise" position is a smokescreen which only serves to becloud the real issue, _i.e._, the disposition of the _present_ remains and burial goods in the Society's possession. A brief examination of the LB 612 controversy and the present position of the parties vis-a-vis the real controversy readily reveals that Mr. Hanson and his group have, in fact, conceded nothing while the Pawnee Tribe has essentially conceded everything it can.

As you will recall, LB 612, as revised on February 8, 1988 and supported by the bill's proponents and sponsor, would have mandated the return of _all_ Indian remains and burial goods held by the NSHS and other entities, notwithstanding antiquity or whether they were identifiable as to a specific Indian tribe. In light of the controversy spawned by LB 612, the Pawnee Tribe, as indicated by Chairman Goodfox at the June 24 meeting, has reconsidered and significantly compromised its position manifested in the revised version of LB 612. As indicated above, the Tribe now calls only for the return of identifiable remains and burial goods to respective tribes upon request for proper and dignified reburial in accordance with tribal tradition. According to Mr. Hanson's own figures, as reported in the June 24, 1988 issue of the Omaha World Herald, the Society's collection contains "the skeletal remains of about 500 people, mostly Indians," approximately 100 of which are Pawnee, while "the other Indian remains are indistinguishable as to tribe." _Accordingly, based on Director Hanson's own figures, simple arithmetic unequivocally indicates that the Tribes have already compromised 80% of their position, as reflected in the revised version of LB 612, considering that the Tribes are now calling for a policy which is limited to mandating only the return of identifiable remains and burial goods to respective tribes upon request_.

On the other hand, Mr. Hanson and his group have not conceded and clearly do not intend to concede anything whatsoever as to the present remains and burial goods controversy, which is the only real issue before the Board.

Mr. Hanson's proposed policy clearly substantiates this. Moreover, his proposed policy is a clear reflection of the unrelenting position, noted above, which he has espoused all along to us and others, namely, that "nothing will leave the Society's collection" under his tenure. In short, Director Hanson and his group of archaeologists have not compromised in any way whatsoever, while the tribes have compromised 80% of their original position. To suggest or represent otherwise belies the facts before us.

In light of the foregoing facts and reasons, and in light of the rationale presented by Chairman Goodfox at the June 24 meeting, the Pawnee Tribe emphasizes that it has compromised everything it essentially can. To do otherwise would be a clear violation of Pawnee tribal, cultural, spiritual and religious beliefs and traditions on a wholescale basis. This the Pawnee Tribe cannot do.

Please understand that we appreciate the gravity of this issue and the inherent controversy embodied therein. However, we submit for your individual and collective consideration that the Tribe's proposed policy strikes a reasonable compromise between the competing religious interests of Indian tribes and that portion of the scientific community which rigidly adheres to retention at all costs.26/ Clearly, the Tribe's proposed policy calls for concessions on the part of both sides.27/ In stark contrast, the Hanson policy calls for no concession on his part, while at the same time it would mandate complete concession on the part of the tribes. Stated another way, under the Tribe's proposed policy, each sides gets something--Mr. Hanson and his group get 80% of what they want,

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26/ As to the future, speculative scientific importance of the existing remains and burial goods, which is the sole reason given by NSHS to justify its refusal to return Pawnee dead and burial goods to the Pawnee people, the questions for decision should be: (1) what exactly is the remaining scientific value, in specific emperical terms, of those human skeletal remains and burial goods, in light of all prior, numerous studies conducted thereon; and (2) does this future, speculative scientific interest outweigh the cultural, religious and spiritual interests of the Pawnee Tribe held throughout time immemorial?

27/Moreover, the Pawnee Tribe continues to be willing to explore any and all practical and reasonable procedures that will facilitate the return of the remains and burial goods of their dead.

while the Tribe gets 20% of what it wants. Concomitantly under Mr. Hanson's proposed policy, the Tribe gets nothing and Mr. Hanson and his group get everything. The Pawnee Tribe submits that such a position and/or policy is and would be highly unreasonable, unfair, unconscionable, and ultimately indefensible. If in fact the Board seeks a real compromise in this issue, we suggest that the Tribe's proposed policy presents a "win-win" compromise that could and will ultimately resolve this controversy, if adopted by the Board. We sincerely urge you to so resolve this issue at the October 8, 1988 meeting in Lincoln by adopting the enclosed policy proposed by the Pawnee Tribe.

B. The Commitment To Work In Good Faith With the NSHS Board and to Seek a Remedy Through Other Available Forums, If Necessary

As Chairman Goodfox stated at the June 24 meeting, the Pawnee Tribe is vitally committed to securing the remains of their people and burial goods for proper tribal reburial. Pawnee cultural, religious and spiritual beliefs and traditions dictate that it do so. As attorneys representing the Pawnee Tribe, we are ethically obligated under the Code of Professional Responsibility to seek any and every necessary legal avenue to obtain a remedy which will redress our client's legitimate claims. The Pawnee Tribe does not view this serious matter as a sporting event, nor did its elected governmental officials and representatives travel 800 miles to Ft. Robinson to witness procedural and substantive gamesmanship. We expected intellectually honest debate supported by hard facts before the Board on this issue so that the Board can accurately and comprehensively assess the problem under consideration and arrive at a reasonable and fair resolution in the best interests of all concerned.

Notwithstanding prior adverse decisions to the Tribe's repatriation requests rendered by both the NSHS Board and staff, the Pawnee Tribe will continue in good faith to exhaust all of its NSHS remedies to allow the Society every opportunity to give this matter full, fair and timely consideration. Thus far, we have: (1) proposed a reasonable compromise solution for adoption as Board policy (attached policy); (2) offered recommendations to ensure impartiality and integrity of the process; (3) offered to supply expert references to the Board; and (4) stated we are willing to continue working with the Board in good faith up to and including the October 8 meeting, as long as the NSHS so reciprocates. We hope these factors make our good faith pledge to work with the Board self-evident.

If certain members of the Board perceive our efforts, including the instant portion of this letter, and our professional obligation to our clients to be a "threat," such is not and was never intended. The Tribe would be less than candid if we withheld from the Board our intention to seek all available remedies, including traversing the legislative and judicial routes, should our efforts to exhaust available administrative remedies before the NSHS Board ultimately prove fruitless. Certainly, both the short-term and long-term potential costs and benefits of any decision by any governmental body, whether they be legal, financial, social, or otherwise, should be taken into account by responsible decision-makers as a routine part of the overall deliberative and decision-making processes. Indeed, the public interest clearly compels such forethought and consideration. Perhaps it is the nature of the subject matter in controversy which causes basic values and beliefs to be raised and examined. Nonetheless, the Pawnee Tribe will continue to work with your state institution until such time as this issue is timely, reasonably and satisfactorily resolved, or until it becomes apparent that the process is legally futile.

CONCLUSION

I realize this letter is lengthy, but felt it important at this time to keep the NSHS policy issue on track after the disappointing June 24 meeting by setting forth in detail the Tribe's viewpoints, by offering a specific proposal and recommendations which are supported by the Tribe's facts and rationales, and by giving reassurances of the Tribe's good faith, despite prior denials and other administrative and policy process concerns which we do have at this stage. To facilitate the Tribe's continued involvement, I am requesting the following information and documents:

1. When will NSHS staff respond to the Tribe's written request for NSHS information as set forth in the attached correspondence, and when will the Tribe's researchers be permitted direct access to the underlying records and files? We submitted our requests on May 13 and June 3. Our researchers have been waiting at our expense since May, and if the Tribe is put off, it will be significantly prejudiced in its efforts to continue to work with the Board. We need the promised written responses by late July, and direct access to the compiled records by early August;

2. Please mail me a copy of the Hanson policy presented at the June 24 meeting for my file;

3. Please mail me copies of all written comments received or solicited to date by the Board's Policy Committee regarding this matter, as well as copies of any written records of solicitation. In addition, please provide us with same on a continuing basis; and

4. Please advise me in writing of the Board's responses to the Pawnee Tribe's concerns, dissatisfaction, and recommendations regarding the NSHS administrative and policy process to date that are outlined in this letter.

If you have any questions or comments, do not hesitate to write me or Walter Echo-Hawk at the above address or call either of us at our office at (303) 447-8760. We look forward to your thoughtful review and consideration of the matters discussed herein and to receiving the information requested above. Thank you.

Sincerely,

Robert M. Peregoy
Walter R. Echo-Hawk
Attorneys of Record for the
Pawnee Tribe of Oklahoma

WRE/mdw
Enclosures

cc: (w/encs)
NSHS Board Members and Executive Director
Governor Kay Orr
Attorney General Robert Spire
Senator Ernest Chambers
Lawrence Goodfox, Jr., Chairman
Pawnee Tribe of Oklahoma
Reuben A. Snake, Jr., Chairman
Winnebago Tribe of Nebraska
Doran Morris, Chairman
Omaha Tribe of Nebraska
Donald LaPoint, Chairman
Santee Sioux Tribe of Nebraska
Keith Chamberlain, Chairman
Nebraska Indian Commission
Reba White Shirt, Executive Director
Nebraska Indian Commission
James Botsford, Esq.
Walthill, Nebraska

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POLICY OF THE NEBRASKA STATE HISTORICAL SOCIETY REGARDING TREATMENT OF HUMAN SKELETAL REMAINS AND BURIAL GOODS

Effective as of this ____ day of ________, 1988, the following shall be the policy of the Nebraska State Historical Society regarding the treatment of human skeletal remains and burial goods which are in the possession, care, or custody, or may in the future come into the possession, care or custody of the Nebraska State Historical Society from the date of this policy.

(1) Human skeletal remains and burial goods come into the custody of the NSHS almost exclusively through the conduct of archaeological investigations. It is our policy to avoid exhumation of human skeletal remains and burial goods unless those remains and/or burial goods are in immediate danger of destruction from natural or human activity which cannot be mitigated.

(2) If human skeletal remains or burial goods cannot be reasonably identified as to a tribe or a person, they may remain in the Society's custody and be given proper and respectful treatment, unless other disposition is or shall be in the future specifically provided for by Nebraska law. The role of the Society in the former situation is to provide proper treatment, conservation, storage and study for such remains and burial goods.

(3) In cases where human skeletal remains or burial goods may be identifiable as those of a specific individual, it is the prerogative of the living next-of-kin to determine the

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treatment of the skeletal remains and burial goods, unless some other procedure is or shall be in the future specifically provided for by Nebraska law. The role of the Nebraska State Historical Society in the former situation will be to facilitate the identification process and then turn the skeletal remains and burial goods over to the custody of the next-of-kin.

(4) In cases where the skeletal remains and/or burial goods can be reasonably identified in origin as being of a specific ethnic identity (such as an Indian tribe), such skeletal remains and burial goods shall be turned over to such descendant group in a timely, expedient manner, provided that it is the desire of the descendant group, as expressed by its authorized representatives, to take custody of the skeletal remains and burial goods, unless some other procedure is or shall be in the future specifically provided for by Nebraska law. The role of the Nebraska State Historical Society in the former situation is to assure that the anthropological study is adequate to identify the proper descendant group, solicit the group or tribe's opinion regarding the disposition of the skeletal material and burial goods, and effectuate the disposition thereof in accordance with the stated wishes of the respective group or tribe.

Prepared and proposed by the
Pawnee Tribe 6/24/88

Sacred Objects, Burials and Museum Collections

Linda B. Robertson
Museum of Man
Wake Forest University

On the last day of Introduction to Cultural Anthropology, I tell students what I believe to be the essential dirty truth about anthropology, that having stressed throughout the semester cultural relativism--the idea that a culture and its beliefs can only be judged by its own standards--and the need to suspend their own systems of moral beliefs, I have to tell them that in the end anthropologists do make moral judgments. We gather as many facts as we can, taking into account, as best we comprehend it, the moral order already in place within a particular people, and on that basis try to understand. But the understandings gained are no less moral statements for calling on that broader base. Cultural relativism is the product of our own moral postulates, which define "fair", and our understanding of expectations of "fairness" in the worlds of other people. We translate that message of a hybrid, mediated fairness to the general public by every means we know, and for many people their first credible, tangible experience with other peoples and other ways happened in museums of anthropology.

It is this essential belief in the morality of what we are doing that makes these hard times indeed for anthropological museums, for museums also keep the archives of anthropology, including its first steps and the collections created out of the past moral choices. Probably predictably, these functions have come into contradiction as 100 years of new understandings of the moral principles underlying other cultures have come to inform our cultural relativism .

Museums are obligated both to operate according to accepted anthropological principles and to maintain the materials collected during the entire developmental period of those principles to date. The two mandates are now far from congruent.

Museums are in legal and probably moral jeopardy for holding religious objects and osteological remains from precisely the persons whose partisans we have been. Legally, such issues will be settled in accordance with current interpretations of constitutional law.

But the law is not our primary concern here. As anthropologists, when members of other cultures say that they are being unfairly treated, regardless of the legality of the situation, we should listen. If we don't, we have given up that notion of thoughtful, mediated fairness that allows us to learn and teach about other cultures in the first place. This quandary must be understood and dealt with if anthropologists are to remain integral parts of museum anthropology.

It is important to examine how and why the disputed collections were assembled and whether or not those purposes still hold today in the light of improved understandings of other cultures. At what point did they cease to serve this doctrine of fairness and become instead inimical to it?

Anthropology'sfounders were essentially gifted amateurs. Although major anthropological collections were made from the beginning of the Bureau of American Ethnology's work in 1879, the first anthropology degree was not granted in the U.S. until 1895. Most of its guiding theoretical and ethical principles were not developed and expressed until well into the 20th century. The first extensive period of fieldwork in American was mandated by the BAE and by the conviction in the intellectual community of the day that American Indian cultures would be totally assimilated into American society by early in the 20th century. The idea of Manifest Destiny was indeed pervasive and, whatever their private feelings toward it, anthropologists of the day believed they had no choice but to collect and record as much as possible as quickly as possible. Support was available for such "salvage ethnology" and such collections, and it became a time of unparallelled research and acquisition for museums. This major period of fieldwork changed anthropology. Continuing to see informants as primitive, lower-order beings was impossible under first-hand scrutiny, and the notion of cultural relativism developed as an important tenet. This was, however, after the large ethnological collections of the 19th century, those which most commonly contained the religious paraphernalia now in dispute, had already been made. To consider the historical figure of Frank Cushing, as his understanding of and attachment to Zuni religion grew, the publication and collection of information and items pertaining to it dropped off and eventually stopped. His individual experience in this respect seems to parallel the collective professional life of ethnology over the past century. And it is among the ethnologists that we find the strongest support for museums' return of disputed pieces to tribal custody.

Following this change of emphasis, museums' major task became to educate the public about other cultures, at first, as clues to what our own past might have been like, but later more often to make a tacit convincing case against interference from politically and economically ascendant societies. Museums have performed with great success in this arena, I believe, and it is of great importance that anthropology museums continue to express current values in the profession. It is, I think, not this aim but the practices that have accrued to it that now require re-examination.

To pursue this, it is necessary to look at the 19th century. In the intellectual climate that produced and followed Darwin, anthropology pursued an increasingly evolutionary line of thought that saw less technologically advanced cultures as "living fossils" of our own past in a Western world that saw its own civilization as the epitome of human progress to date. This placed all cultures on a ladder of progress leading toward western civilization, allowing the morality of bringing other cultures quickly to the top (i.e., Western civilization) rung, with all its religious, social and technological features, to remain unquestioned. Therefore, early study of non-Western cultures tended to treat their religious practices as curiosities, keys to what our own arcane past may have been like. Other religions were seen as primitive science or merely unsophisticated misunderstandings of religious ideas better understood and expressed by Western thought.

In such a climate, it is not surprising that religious items were collected that were never meant to leave the hands of that religion's believers. Collection of such objects and nineteenth century ethnological practices in clear violation of the host society's religious rules were not seen as reprehensible in the 19th century.

These collections accomplished two goals seen as important and acceptable to 19th century American society: (1) They took away items that were impediments to the desired progress of the group to that top ladder rung, and (2) They amassed, for future historical interest, evidence of this soon-to-be-abandoned stage which was also thought to inform on the religious state at some presumed earlier time in our own cultural evolution.

Although the predicted death of American Indian cultures had not happened by the early 20th century, it was still believed at that time to be inevitable and imminent, and early 20th century ethnologists continued to research and collect in expectation of it. As the idea of cultural relativism developed, however, the research and collection concentrated more on everyday life and less on subjects forbidden to outsiders. A more complete understanding of why collecting religious items was objectionable, combined with the relativistic notions that the objections were valid if the culture's members believed they were valid, made such collection unethical in anthropological terms. The religions in question were no longer seen as doomed fossils on a progressive ladder and grist for our own historical mill but living vital properties that belong to someone else.

It is primarily in the early 20th century that human skeletal material from archaeological sites, a different sort of problematic collection, began to come into the museums in quantity and continues to be brought in today. The first major collections, primarily cranial material, were made in the early 20th century, to examine the physiological differences among the various races, and much of the succeeding fifty years of collection and research on such collections continued on this theme. The studies of variation have been used for a number of purposes, but in an intellectual climate that stressed evolutionism and whose practitioners collected some putative "racial" groups' human burial remains for museums and left others in well-marked cemeteries undisturbed, there is an implication of belief in a racial hierarchy. As early ethnologists followed general public opinion in believing that American Indians represented a sort of earlier cultural evolutionary "snapshot" of our own past, it seems likely that the early emphasis on "racial" variation in the osteological collections grew out of the same implicit set of assumptions. Considering the intellectual climate of the day, it seems almost inevitably so, and Brace has written convincingly (1982) on the subject.

Certainly the data collected were ones easily misused--they often focused on such considerations as the size of the brain-case. As early as 1894, the ethnologist and avowed anti-racist Boas argued that this "cephalic index" was not reliable as a racial indicator--essentially that this physiological difference between the races was not valid. Although he was greatly criticized at the time, his contention is now widely agreed on, and the concept of a number of distinct races has been abandoned entirely by many members of the field. He had anticipated most major attacks on skeletal biology as a way of dealing with race by about 40 years.

In the years since the early museum osteological collections were made, then, there has been a major change in thinking about the nature of that data. The early collections were buttressed by two rationales: (1) intellectual interest about the variation in humankind, and (2) an at least tacit belief that the materials collected were the same sort of views of our own earlier past--and therefore in some sense "ours" to make decisions about and study--as the ethnological artifacts and customs then being catalogued. The second underpinning would be roundly disavowed by now in the field--to continue to hold them for that reason would not be defensible in current anthropological thought. We are left, then, with the intellectual interest in human variation as the remaining rationale for holding these collections.

This intellectual curiosity has yielded laudable results. Early collectors may have expected the skeletal material to confirm and elaborate existing notions of racial differences, but in many cases they did not do so and it was out of this work that such notions of physiological racial hierarchies were eventually discounted. Instead, techniques were developed for dealing with more particular problems of individual and population histories that have illuminated greatly our knowledge of the world's past, and that have, I think, often contributed to the sort of "fairer" notions of various cultures, and other cultures in general. Interestingly, it may well have aided the growth of the power whose exercise could now put those collections back in the ground.

There is some fitness in that, and it may provide some comfort for those to whom that goal of relativistic fairness is of primary importance. The study of such materials has provided important and positive information to researchers, but to count the costs of those data is still an inescapable responsibility of the museums involved. When probable descendants' religious freedoms are violated by such practices, the costs are high indeed, both to the descendants themselves and to museums who regard themselves as repositories of "culture," preserves for what is best about humanity.

Emphasis on anthropology as a science is an older tradition in the profession than cultural relativism, having sparked the early investigations before discomfiting questions about that ladder of evolutionary progress were raised. And there is no question that the return of collections removes them from unquestioned scholarly purview; whatever scientific inquiries have not been made of them will either remain unmade or be subject to close scrutiny by persons not steeped in the Western scientific tradition. Some future avenues of research may well be eliminated. At that point, one could only hope for a little relativism from the other side, for there is no legally-mandated right to pursue knowledge for its own sake, as there is to pursue one's religion without molestation. The question becomes at that point whether or not the important features of the knowledge to be gained from those pieces can be obtained by other means. These are serious questions for an anthropology museum to consider, for the courts in upholding religious freedoms over research freedoms will probably be uninterested in the reasons for the museum's choice, however well-considered. Not to recognize that the issue here is one of religious freedom is to return to the 19th century and its beliefs that Native American religions were only some forerunner of religion rather than the genuine article. Museums intending to argue for the retention in collections of disputed religious paraphernalia and human remains should recognize at the outset that they will have to defend (1) either that unlovely view of Native American religion as less valid than other religions or (2) the position that research freedoms should take precedence over all religious freedoms, also a difficult and dangerous position to contemplate defending.

We must consider that, however positive the original reasons may have been for the acquisition of such collections, those reasons may well be no longer valid enough, in the light of better information in the form of direct testimony on what constitutes fairness for the groups involved. Museum anthropologists cannot afford to ignore the contradictions inherent in the keeping in storage of religious paraphernalia or human remains from conservative and long-lived cultures whose current members tell us unequivocally that it is wrong to do so. American Indian cultures did not die in the early 20th century, nor have they since, and many groups' cultural integrity and religious beliefs remain vital forces. We know that many early 20th century anthropologists regarded racism in principle as something to be fought in whatever form it was found, and the identification of some of the early methods of research as having participated in underlying tacitly racist ideologies of their day should not be disregarded.

When the logic of our profession's current principles comes into conflict with the practices of our past, I would suggest that we look for guidance to the intentions of the most far-sighted of our founders, rather than to the methods chosen as appropriate to the America of the late 19th and early 20th centuries. Our museums must live in the 1980s--it is proper that our behavior reflect it. While it is indeed our job to look at the past and present it in our educational offerings, and certainly anthropology's past is fair game in this enterprise, we are not under obligation to continue to live that past. It is as fitting a response to our archival responsibilities to represent the goals of anthropology's past as to preserve the results of the methods intact. As we have changed the curation methods with better understanding of the consequences of the physical storage policies of the past, it may also be time to change the methods of decision-making regarding collections retention in accordance with new understandings of consequences as well. If the consequences are legal and moral (or even public relations) rather than physical, they are no less legitimate concerns of a museum.

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PAWNEE MORTUARY TRADITIONS

July 4, 1988

Roger C. Echo-Hawk

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PAWNEE MORTUARY TRADITIONS

I. Introduction

Native American societies throughout the Western Hemisphere have evolved diverse traditions surrounding the disposition of human remains. In the Central Plains area of the United States, Indian societies have historically buried their dead on scaffolds, among the branches of trees, and in the earth--conducting these burials according to traditional tribal practices and religious beliefs. The Pawnees dominated a large portion of this region for an unknown span of centuries, residing in earthlodge towns along the rivers of Nebraska and Kansas until their removal to Oklahoma during the 1870's. No full study has been published on the mortuary traditions of the Pawnee people.[1] However, available ethnographic and historical writings shed considerable light on the subject. This paper draws upon a variety of written sources and offers a detailed--though incomplete--survey of the treatment of the dead by the Pawnees during the 19th century.

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[1] David Bushnell's Burials of the Algonquian, Siouan, and Caddoan Tribes West of the Mississippi was published in 1927 as a bulletin of the Smithsonian Institution and contains a short section (p. 79-82) on Pawnee burial practices. The most important source of information on Pawnee mortuary traditions is found in James R. Murie and George A. Dorsey's Notes on Skidi Pawnee Society, published in 1940 and edited by Alexander Spoehr (p. 101-107). Murie was a mixed-blood Skiri Pawnee scholar who wrote extensively on Pawnee religion and society. In this paper I have taken the liberty of citing Dorsey's major publications on the Pawnees more accurately as collaborations with Murie. Traditions of the Skidi Pawnee (1904) and The Pawnee: Mythology (1906) were collected and translated primarily by James R. Murie, with Dorsey serving as editor; but these works--together with a third volume of Arikara traditions--appeared in print with Dorsey listed as the author (Parks, in Murie, 1981: 23-24).

The four bands which today comprise the Pawnee Tribe once existed as virtually separate tribes. The Chaui, Kitkahahki, and Pitahawirata are often collectively referred to as the South Bands, and during the 19th century, these Pawnees, together with the Skiri Pawnee, developed an increasingly centralized tribal government. The history of relations between these four groups of Pawnees is quite complex. Aside from noting basic patterns of society and culture common to all the Pawnees, scholars have distinguished linguistic, ceremonial, and other differences between the four bands.

Mortuary practices and associated religious traditions may have varied among the four Pawnee bands, perhaps most clearly between the Skiri and the South Bands. However, available data--as set forth in this paper--indicates the prevalence of basic similarities in mortuary activities, rather than substantive differences. For this reason, though the ethnographic record on this subject largely concerns the Skiri, it may be safe to assume that such information also holds true for the South Bands.

II. The Preparation of Human Remains

Formal preparation of human remains immediately followed the death of an individual in a 19th century Pawnee community. These preparations--which differed "according to the rank and position of the deceased" (Dorsey/Murie, 1940:102)--included the application of facial and body paint, costuming, and a variety of ritual activities.

Dorsey and Murie have twice described the preparations accorded the body of a "warrior" or "man of importance."[2] Both accounts mention dressing such an individual in his finest clothing and ornaments when he appeared to be close to death. This costuming could also be done by a Pawnee priest after the death of an individual (Murie, 1981:179 fn.27).

Following death, the family hired a priest[3] to anoint the corpse with "holy ointment"[4] and perform other ritual acts; as Murie (1981:179 fn.27) notes: "He anoints the body with fat and red paint, places offerings of meat fat in his hands and mouth, and finally dresses the body in the regalia worn during life." In the course of performing these activities, the priest also "recites certain verbal formulae and symbolically sends the spirit on its way." Dorsey and Murie (1940:102) elucidated the purpose and meaning of the application of the "sacred red ointment" in these comments:

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[2] See Dorsey/Murie: 1904:341 fn.125; Dorsey/Murie, 1940: 102. The latter also states that these preparations were similar to those for elders "who died in extremely old age."

[3] Elsewhere, Murie (1981:179 fn.27) defines "priest" or "holy man" as "one who has performed all the possible consecrations and other rites. (See also: fn.21.)

[4] According to Dorsey and Murie (1904:343 fn.133), this ointment "was made from the fat of a buffalo which had been dedicated to Tirawa, mixed with red clay."

> By this paint the man's friends in the spirit land would know that he had been well taken care of on this earth. The red ointment gave the rough and emaciated skin a smooth and healthy appearance. The body was now considered holy, for a corpse without the red paint was looked upon as dust and could not enter the land of the spirits.

Several stories collected by Dorsey and Murie sometime shortly after 1900 mention this sacred red paint. In one story (Dorsey/Murie, 1904:70), a Skiri man died and came back to life. Relating his experience some years later, the Skiri described meeting four men in Spirit Land who were "anointed with red paint. . ." Another story in this same collection of traditions (p. 77) concerns an occasion when the dead were permitted to return to the land of the living. The Skiri prepared to meet their dead friends and relatives by putting the sacred red paint "upon their heads, faces, and hands."

Once the man had been anointed and clothed, if he had been a member of a society, his face was "painted according to the style employed by his society" (Dorsey/Murie, 1940:102). Next, the body was wrapped in buffalo robe or blanket; this robe was apparently tied with a string or rope to keep it secure.5/ The body was now ready for burial.

Sometime before burial, mourning activities took place which involved the general public. In one Skiri story (Dorsey/Murie, 1904:212-218), the death of a popular young chief was followed by a period of public visitation. The body was placed

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5/See Dorsey/Murie, 1940:102; 1904:69, 70, 341 fn.125; Dunbar 1882:734; Weltfish, 1977 ed:169.

in a tipi for viewing, and the narration describes the touching of the corpse by mourning visitors (p. 214). Elsewhere, Dorsey and Murie (1940:103) have stated that in cases where the deceased was an elder, "all the members of the [Skiri] band assembled and each placed his hands upon the body of the deceased, thus expressing the hope that he too might reach old age." The description in Dunbar's (1918:612) journal of a crowd gathering at the death of a Chaui man may represent a more informal manner of public visitation for mourning purposes.

III. Interment of the Dead

A variety of sources agree that funerals among the historic Pawnee occurred relatively soon after death. Burials generally took place on the day of death or on the following day.[6/] Dorsey and Murie (1940:102) noted: "As a rule, the preparation of the body for burial began immediately after death, and the burial followed within two or three hours." John B. Dunbar, in his 1882 (p. 734) ethnographic description of the Pawnees, also noted that "[b]urial took place soon after death." This time-frame was honored by all the Pawnees. No account has been found describing a death in a Pawnee community during the 19th century where the body was kept for two or three days before burial.

[6/] For accounts of same-day burials, see Paul, 1983:64; De Smet, 1863:74. For accounts of next-day burials following deaths during the evening and night, see Dunbar 1918:601-602, 605; Dorsey/Murie, 1904:69, 221. In one story, a body was kept all afternoon and buried the next day (Dorsey/Murie, 1904:214).

Pawnee funerals featured processions to the grave site. Dunbar (1882:734) wrote that "the women bore it [the corpse] to the grave. The relatives and friends followed, howling and weeping."[7] Von Del Chamberlain (1982:109, 110), citing Murie and Alice Fletcher, has more recently written that the dead were transported on stretchers, with mourners following behind. These processions probably varied in composition according to the status of the deceased and other circumstances.

The Rev. P.J. De Smet witnessed the funeral of a young Pawnee man in 1858 at Fort Kearney, and his observations imply that the entire tribe attended the burial: "They placed him in the grave amid the acclamations and lamentations of the whole tribe" (De Smet, 1863:74). Elvira Platt attended the funeral of a prominent Chaui during the 1860's, and later recalled that "the agent and many of the [agency] employees followed him to his burial. . ." (Platt, 1918:792). An early missionary, traveling with the Chaui Pawnee in 1834, recorded this description of a funeral procession for a child:

> One cold morning as I was returning from my walk, I saw several women, bearing the lifeless remains of a little child, that had died the preceding night, to his burial.

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[7] Dunbar's father, John Dunbar, served as a missionary among the Pawnees during the 1830's and 1940's. In October, 1834, the elder Dunbar wrote in his journal about the death of a Chaui man: "As soon as it was light, the dead man was taken out and buried. His wives and friends followed loudly howling, and weeping to the grave lamenting their loss" (Dunbar, 1918:601-602).

> They carried it a short distance, then placed it on the ground, stopped and wept awhile, then took it up and went forward, all the while howling sadly. The father, a young man, followed at a little distance, apparently, in an agony of grief." (Dunbar, 1918:605.)

Graves were dug and prepared sometime before the procession started out.[8] Among the Skiri, this was done by the women:[9]

> Women were paid to dig a grave about two and a half feet deep. Then the women went to the timber and cut two forks and several poles. These they took up on the hill where the grave had been dug, set the forked poles, one at each end, and laid a pole across the two forks of the end poles. (Dorsey/Murie, 1904:341 fn.125.)

The dead person was then transported to the grave and placed inside. In deference to the Morning Star and his role in directing the disposition of human souls, the Skiri preferred to orient the bodies of their dead "with the head toward the east" (Dorsey/Murie, 1940:102). A variety of objects were commonly placed inside the grave with the corpse, and then the grave was closed:

> . . .poles were set up on each side of the pole lying across the forks, grass was piled on top of these at each end, and the women piled a lot of dirt upon the poles around the

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[8] There may have been instances where the dead person was taken to the burial site before the construction of the grave (see Dorsey/Murie, 1906:126-127).

[9] In 1851, George Kendall witnessed the burial of a Skiri elder and reported: ". . .at dusk the female members of the family had brought his body out [and] buried it. . ." (Paul, 1983:64). Though Kendall did not specify whether these women constructed the grave, the implication is clear that they did.

> grave, so that it was like a house. Sometimes the grave was dug deeper, so that the person was set in the lodge. (Dorsey/Murie, 1904:341 fn.125.)

The construction of graves probably did not vary much among the four Pawnee bands. The following account of the burial of a young woman is from a story told by White Horse, a Pitahawirata Pawnee who died in 1915:

> The people took her up on a high mound close to the graveyard and there they dug a hole about two feet deep and then they set up two forks, one on the east side and one on the west side. They placed a pole across it and then put poles against this pole. Then they took the girl up there and placed her upon the platform, with many presents of buffalo robes and all her dresses. They covered the place with grass and then with sod, so that the grave formed a little mound.[10] (Dorsey/Murie, 1906:126-127.)

Once the grave was closed and covered, plants were often placed on the grave, as one eye-witness account notes: "A tall bush was frequently stuck in the ground, to designate the spot" (Oehler/Smith, 1974 ed:32). Finally, according to Dunbar (1882:734), "sticks or stones. . .were piled upon the grave to prevent the body from being disinterred by wolves." Dunbar also commented on the use of grave markers:

> A post curiously painted was usually placed at the grave. The devices on these posts were rude in conception and execution, and had a double purport. Part were designed to commemorate anything remarkable in the life or character of the deceased; while others were expressions of a belief in his continual

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[10] Compare with a Skiri burial account in Dorsey/Murie, 1904:215.

> existence. To this end his spirit, winged, was represented as passing away to another world. (Dunbar, 1882:734.)

The burial practices of all four bands of Pawnees included the interring of possessions, religious artifacts, gifts, and other "grave goods." Members of societies were buried with associated ceremonial paraphernalia (Dorsey/Murie, 1940:102); and after society lances were renewed, the old lances were "kept to place in the graves of great warriors" (Murie, 1914:560). Dunbar (1882:734) mentions "trinkets, and perhaps an article of value, as a bow or tomahawk" as being commonly interred with the dead. White Horse's account of the burial of a young woman, quoted earlier, mentions the placement of dresses and robes in her grave.

Sacred bundles were also buried with the dead. Murie (1981:197) mentioned the interment of a Kitkahahki bundle, the Small Dark Thing, with "the son of Curley Chief. . ." Other bundles are mentioned as having been buried with their owners (Dorsey/Murie, 1904:221; 1906:250). Medicine objects were also interred (Dorsey/Murie, 1904:221; 1906:250). There were articles, however, which were not normally placed in graves, as noted below:

> Reference has been made to the fact that personal belongings were buried with the dead. However, there were certain exceptions to this practice. Personal war bundles containing meteorites or any objects supposed to have had their origin in the heavens were not buried. This was in accordance with the belief that these objects belonged in the heavens and not in the ground. Hence, when an individual possessing such objects died,

> and if the relatives did not want them, the bundle was unwrapped and the objects were placed on a high hill, whence they returned to the heavens. Such objects were supposed to be the children of stars, watched over by them, and it was believed that when people had no further use for these "children," they would return to their parents in the sky. Also, if a medicine-man died during the time he was giving instruction to his son, his medicine bundle was retained for the boy's use when he became of age. (Dorsey/Murie, 1940:106.)

Objects were also placed on or next to the grave. All such objects, together with goods placed inside the grave, were considered to belong to the grave's occupant. According to Dunbar (1882:735), mourners sometimes visited graves to leave food and other objects "for the use of the dead." Horses were occasionally slain at the grave site as a sacrifice for the dead:[11/]

> If the deceased had any ponies, and the relatives knew that he liked any particular pony, they would kill the pony upon his grave, believing that he would ride the pony to the Spirit Land. If the people were told by the deceased not to kill any ponies upon his grave, then the relatives roached the pony and cut the hair from the pony's tail; then they spread the hair over the grave and kept the pony. (Dorsey/Murie, 1904:341 fn.125.)

Dorsey and Murie's Traditions of the Skidi Pawnee contains a story describing a burial which included the

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[11/] Gene Weltfish's Caddoan Texts contains a story told by Effie Blaine (Pitahawirata) in which a horse was sacrificed on the grave of a young woman (p. 80): ". . . there he found a dead horse that had been killed for the girl." Concerning the possession of personal articles, Dorsey and Murie (1904:342 fn.126) wrote: "The people believe that when they die they take all their belongings with them to Spirit Land."

erection of a tipi over the grave as a gift for the dead girl. A footnote explains the purpose of this tipi: "A form of burial, expressing on the part of the parents great affection for the girl,--it being supposed that she would take with her to the Spirit Land the spirit of the tipi and its belongings, which were now abandoned for her" (Dorsey/Murie, 1904:342 fn.130). Following the death of a son, a Pawnee chief might leave his "war ornaments" at the head of the grave; and in addition: "If the chief had any calumet sticks, they were placed upon the grave" (Dorsey/Murie, 1904:341 fn.125).

The improper disposition of grave offerings could have severe consequences for the Pawnees, as the following anecdote illustrates:

> A Skidi chief's daughter died. The father had received calumet pipe sticks from the Chaui band, and his daughter had participated in the ceremony accompanying the gift. Her death followed shortly after the ceremony and was attributed to the belief that the ceremony had not been properly performed. Consequently, over her grave her father placed the pipe sticks, oriole's nest, wildcat skin, gourd rattles, and tobacco bag that comprised the special objects used in the ceremony. That year drought prevailed, the crops withered, buffalo could not be found, and the Skidi were forced to depend on their cache reserves. The Chaui priest who had originally brought the pipe sticks visited the Skidi, and with the chief to whom he had presented them, went to the grave, removed the ceremonial objects, wrapped them in a bundle, and taking the earth from over the body, placed the bundle next to it. He then re-filled the grave. Shortly after, there came a great rain storm accompanied by thunder. The Chaui priest sent for the Skidi chief, and after a feast told him it was very wrong to put the calumet pipe sticks on the

> grave, and that if he should ever lost another child and "desired to throw away the pipe sticks, they should be buried in the grave and not on it." (Dorsey/Murie, 1940:106-107.)

IV. Rituals and Mourning Practices Associated with Grave Sites

A variety of activities took place at the locations of closed Pawnee graves. These activities occurred either as part of the funeral or as independent events during the months and years that followed. One visitor to the Pawnees in 1844 asserted: "Those who have died recently they suffer no grass to grow over [their graves], until two summers have passed away" (Carleton, 1983 ed:74). The graves of dead Pawnees bore a continuing significance to living friends and relatives, and to Pawnee society as a whole.

The slaying of horses at the grave was probably conducted in a ritualistic fashion. Horses were killed and left upon the tops of Pawnee graves, or perhaps leaning against the mounds. This sacrificial offering--intended for the use of the deceased--was not disturbed upon the grave. Other offerings were probably given at the burial site. Elvira Platt's account of the burial of a leading Chaui elder mentions the offering--under special circumstances--of two separate buffalo meat sacrifices:

> At his [Te-row-a Tup-uts'] death the agent and many of the employees followed him to his burial on the bluff overlooking the beautiful valley of the Loup. A most remarkable phenomenon occurred as we awaited the burning of the dried buffalo meat which his wife had drawn aside to offer for his

> support as he traveled to the distant land of the dead. As the smoke of the offering ascended, from out of the clear azure above us came a long roll of distant thunder.
>
> * * *
>
> Some days after our old friend was laid to rest his lonely companion came to the school, and entering the sitting room, exclaimed, "I have been to burn more meat for the old man, and I think he will stop coming to me. He has been in my lodge every night disturbing me, and I have told him he must stop." Some time after this I saw and asked her if she rested now, and she assured me that the "old man" left her alone; that he came no more. (Platt, 1918:792.)

The meat offering and the sacrifice of the horse were carried out during the course of the funeral; but other ritual activity could occur later. In instances where Pawnee warriors died in battle, the scalp of an enemy was sometimes acquired for use at the burial site:

> [The scalp] was carried home to the village on a pole, and scalp dances were inaugurated. The scalp was consecrated to one of the deities of the heavens, and the man who had taken it wrapped a piece of it in a small buckskin sack with tobacco. This was tied to a long stick representing an arrow and thrust into the grave. Another small piece of the scalp was burned upon the grave. (Dorsey/Murie, 1940:106.)

Following burial, mourners remained for varying periods at the grave. One story relates that a father "mourned four days at the grave of his son. . ." (Dorsey/Murie, 1904:74). The first-hand report of a traveller in 1851 described a group of Skiri women who buried an old man at dusk and then "sat moaning, wailing and crying in the most doleful manner for hours and hours in token of their sorrow" (Paul, 1983:64).[12]

In the months and years following a funeral, Pawnees occasionally visited the graves of relatives to mourn and leave offerings. Washington Irving's nephew, John T. Irving, witnessed such a visit by a Kitkahahki woman to the grave of her brother in 1833 (Irving, 1955 ed:170-172). Dunbar later discussed this behavior:

> Women continued for years to resort to the grave of a brother, husband, or child, to mourn. Seated beside the grave they would give utterance to their feelings in plaintive wailings. . .or in a sort of monologue, talking to God they termed it. Sometimes they also placed food at the grave, or if a man, a bow, for the use of the dead. (Dunbar, 1882:735 [emphasis in original].)

V. Pawnee Cemeteries

The official journal of an early U.S. exploration party features what may be the earliest available description of a Pawnee cemetery. The Long Expedition was launched by the United States in 1820 from eastern Nebraska--its purpose was to investigate and catalogue the physical and human features of the Central Great Plains region. This expedition stopped by the Pawnee towns for guides and horses; and Captain John R. Bell noted the existence of a cemetery near the Skiri earthlodge town:

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[12] For other mentions of such mourning activities see Dorsey/Murie, 1904:71-73; 1906:126-134, 411; Weltfish 1937:79-82; Dunbar, 1918:605.

> This Village is situated on a plain and near the margin of the river, the bank high and abrupt, filled with rock--the plain is about three quarters of a mile wide, when commences the hills or undulations of the prairie which are also high--on one of them is a cemetery for the dead, where a pole is erected, on which is suspended several articles furnished by the medicine men of the nation, which I suppose was no more than to make the place as sacred, and to have a serious and solem [sic] effect of the living--the village is built after the same manner as the other two. . . (Fuller/Hafen, 1973 ed:118.)

Pawnee cemeteries also attracted the attention of later travellers in the Central Plains. John Irving, in 1833, described a Kitkahahki cemetery as consisting "of a number of small mounds. . ." (Irving, 1955 ed:170). One U.S. Army officer, visiting a Cȟaui town in 1844, wrote: "The Pawnee bury their dead upon the summits of the bluffs, and for two or three miles above and below this town, the top of each hill is covered with graves" (Carleton, 1983 ed:74). In 1847, William Clayton observed graves along the bluffs near a Pawnee earthlodge town (Clayton, 1973 ed:96). Oehler and Smith visited the Pawnees in 1851 and reported: "On the highest mounds in the prairie, we often observed little hillocks of earth, which we were informed were the places of sepulture of their chiefs and others of their tribe" (Oehler/Smith, 1974 ed:31-32).

Various stories narrated by Pawnees contain some mention of cemeteries.[13] Cemeteries were established in association with Pawnee earthlodge towns, and were commonly located on nearby hilltops. Pawnee towns were sometimes inhabited by members of more than one band; in such cases, each band had its own separate graveyard. A map of the last Pawnee earthlodge town in Nebraska, published in Tyson (1976:81), shows a separate cemetery for each of the four bands which occupied the town.

A photograph of a Pawnee cemetery appears in Bushnell (1927:plate 36), taken probably during the 1860's or 1870's. Bushnell obtained the photograph from Francis La Flesche, the Omaha ethnographer, who believed that it showed a cemetery "near the great Pawnee village then standing on the banks of the Platte" (p. 80).

Not all Pawnees of the 19th century received burial in regular cemeteries. One account quoted in more detail earlier in this paper, describes the burial of a young woman in a grave "on a high mound close to the graveyard. . ." (Dorsey/Murie, 1906:126). Graves could be located anywhere near a Pawnee town--not only in the recognized burial ground. Other burials were made in embankments: "When a poor woman died, the women would go to the side of a hill where they would cut a shallow hole, then they would roll the woman in a buffalo robe, place her in the hole and cover her up with dirt" (Dorsey/Murie, 1904:341 fn.125).[14/] Pawnees who were killed in battle or during a raid were sometimes left where they died. Since these bodies were not disturbed, such resting places on the open ground must have been regarded as acceptable alternatives to interment in the earth.

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[13] Dorsey/Murie, 1904:212-218, 1906:126, 410-411; Weltfish, 1937:80. Other mentions of cemeteries occur in Bushnell, 1927:79, 85; Gilmore, 1914:6, 7; Dorsey/Murie, 1940:91.

VI. Conclusion

The disposition of human remains among the Pawnees involved a complex unfolding of tradition, religion, and ritual in an atmosphere of high emotional distress. Anointed human corpses were regarded as holy remains to be interred with dignity in a permanent, undisturbed resting place. Physical objects and artifacts which were placed inside, on, or near a grave became the possessions of the grave's occupant.

Human skeletal remains were not viewed as abandoned relics. According to Dorsey and Murie (1904:342 fn.126): "Dekatcaru, Spirit Land, is derived from Dekatca, spirit; it also signifies a person who has died and is in skeleton form." A continuing relationship was thought to exist between the skeletal remains and spirit of an individual. The few examples where the Pawnees actively used skeletal remains occurred in

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[14/] For an example of this, see Weltfish, 1977 ed:169.

highly religious contexts, as in the use of a human skull with the Skiri Skull Bundle.[15]

The mortuary traditions of the Pawnee people have received only limited attention from scholars--even from many scholars interested in studying Pawnee skeletal remains and grave goods. This paper has attempted to clarify the historical treatment and disposition of human remains by the Pawnee people; additional data from Pawnee oral traditions and other sources, concerning mourning customs, religion, the use of cemeteries in recent history, and on present-day burial practices, may be incorporated into future drafts of this paper.

In order to honor the dead, living Pawnees traditionally provided them with spiritual gifts and constructed permanent repositories for their sanctified remains. This attitude of respect for the dead clearly serves as an elemental feature of Pawnee mortuary traditions.

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[15] See Dorsey/Murie, 1904:55-56 for a brief tradition on the origin of this bundle, told by its keeper, "Gladdener," sometime before 1904. Also see Murie, 1981:76-84, 107-111 for two ceremonies connected with this sacred bundle.

Note on the author:

Roger C. Echo-Hawk (Pawnee) is a student of Pawnee history who has published writings on Indian history, literature, and current affairs. Since 1982, he has served as the Correspondent on Native American Affairs for a literary journal published in Boulder, Colorado. Mr. Echo-Hawk is presently attending the University of Colorado as a history major.

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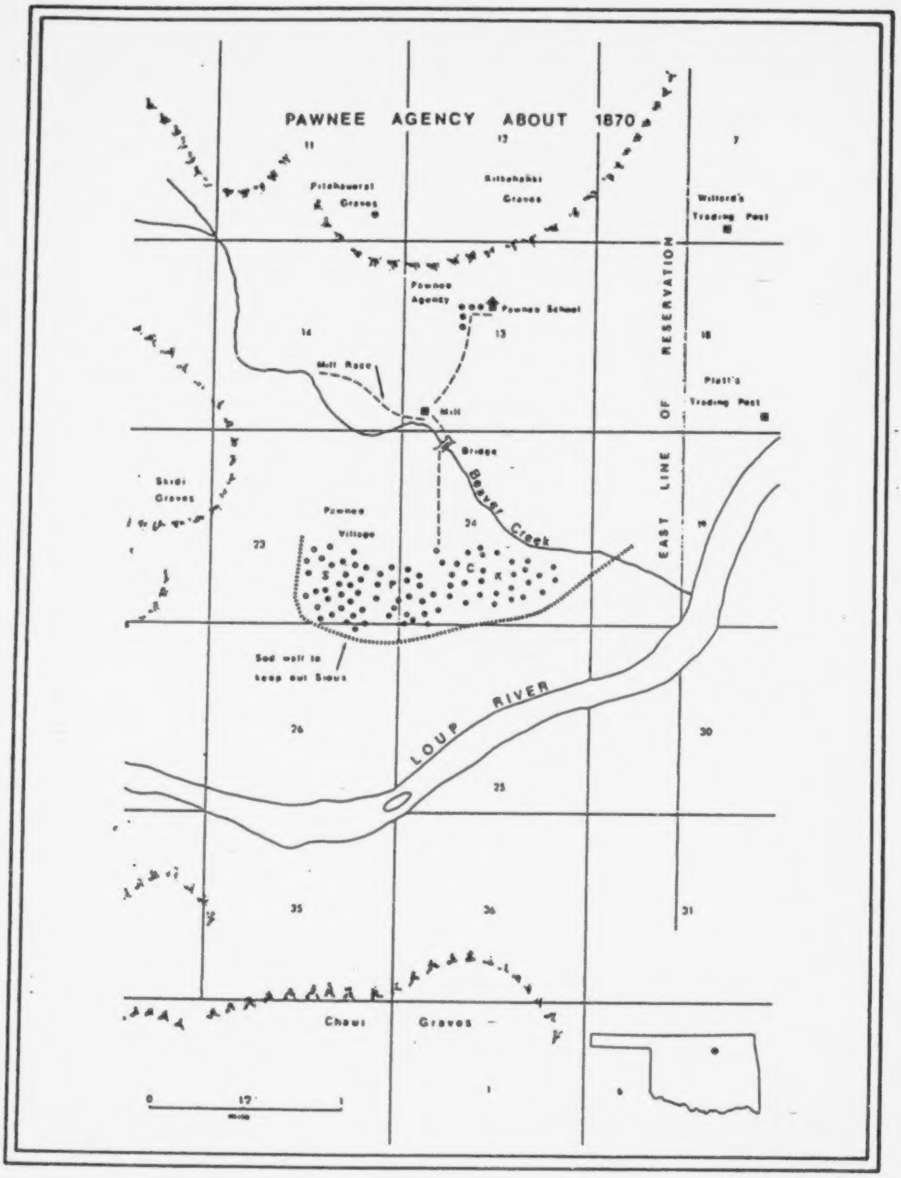

PAWNEE AGENCY ABOUT 1870
11
12
7
Pitahauerat Graves
Kitkehahki Graves
Wilford's Trading Post
Pawnee Agency
Pawnee School
14
13
18
Mill Race
Mill
Platt's Trading Post
EAST LINE OF RESERVATION
Bridge
Beaver Creek
Skidi Graves
Pawnee Village
23
24
19
S
P
C
K
Sod wall to keep out Sioux
LOUP RIVER
26
25
30
35
36
31
Chaui Graves
1
0
1/2
1
mile

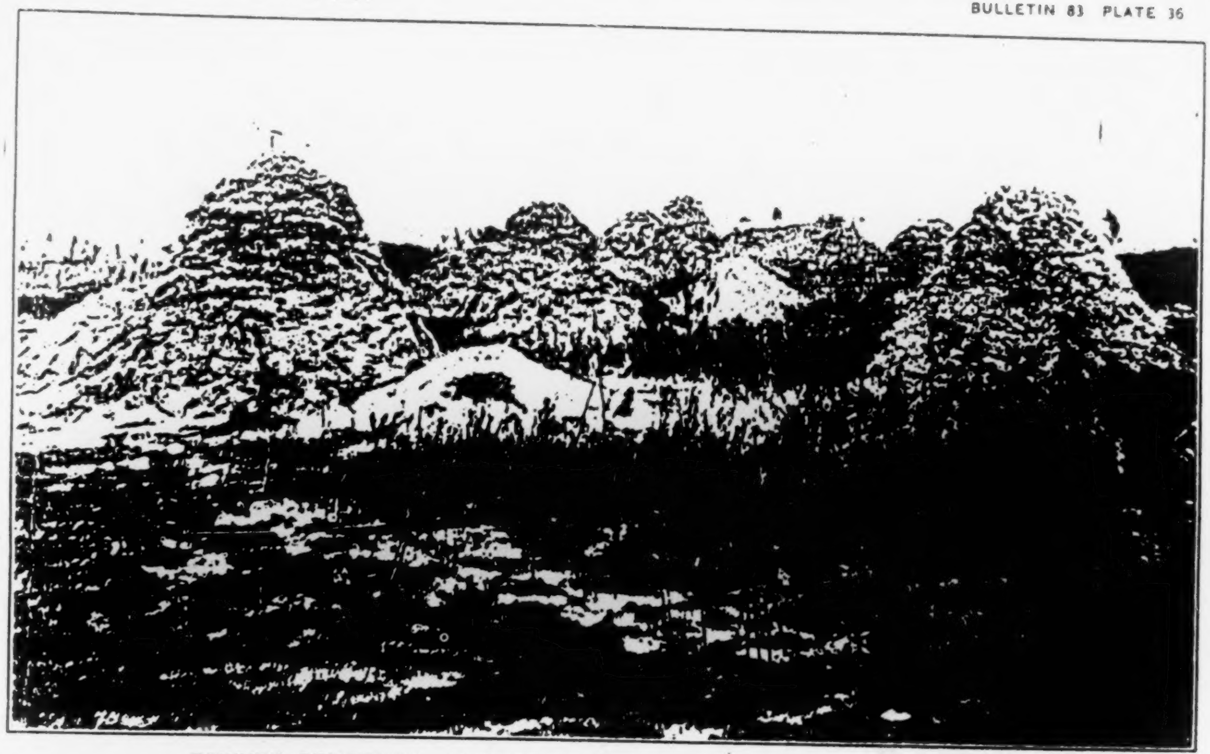
MAP 3.

Map by Don Wade

MAP FROM TYSON (1976:81)

BUREAU OF AMERICAN ETHNOLOGY

BULLETIN 83 PLATE 36



PAWNEE CEMETERY. MOUNDS OF SOD AND EARTH OVER THE GRAVES

PHOTOGRAPH FROM BUSHNELL (1927:plate 36)

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May 13, 1988

James A. Hanson, Director
Nebraska State Historical Society
1500 R Street
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Lincoln, NE 68501

Re: Human Burial and Skeletal Remains Protection Act (LB612)

Dear Mr. Hanson:

As you know, we have been engaged in discussions regarding LB612 in an effort to achieve a consensus bill. To date, our talks have focused upon two general areas of mutual concern: 1) protection of unmarked human burials; and 2) disposition of existing museum collections regarding the same subject. I am in the process of drafting language for the writing committee regarding the former issue, per my April 22, letter.

Regarding the latter issue, I look forward to meeting Dr. Owsley in October to discuss the continuing scientific importance of the Indian skeletal collection of the NSHS. This is the more complex issue and it is important for the Tribes to fully understand and evaluate NSHS's perspectives. Further, I understand that the NSHS is presently evaluating the AAM policy (Jan. 15, 1988) on this subject. In order for the Tribes to evaluate the same AAM policy and to prepare for the discussions with Dr. Owsley regarding this complex matter, I would like to research the collection, including NSHS accession, catalogue and archival records that are associated with the Indian skeletal collection. In order to determine how the new AAM policy might affect the collection[1] and to obtain background information in preparation for discussions with Dr. Owsley, it will be helpful to the Tribes to obtain baseline facts regarding the collection. I have therefore retained Professor Orlan Svingen, a historian with archival research expertise from Nebraska Westleyan University, to examine the above records to obtain baseline data, to determine the circumstances under which the bodies were removed from their graves and ultimately found their way into the collection, and to compile prior studies of the collection.

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[1] The AAM policy, as you are aware, has different guidelines for: 1) illegally acquired remains, 2) technically legal, but unethically acquired remains, 3) post-European remains where a direct tribal relationship exists, 4) pre-European contact remains where a direct tribal relationship exists, and 5) remains that lack any relationship to existing tribes.

I hope to complete this research for our continuing discussions by this summer for my review in preparation for the meeting with Dr. Owsley. Professor Svingen would like to meet with you next Thursday or Friday to discuss the proposed research project design. Can you contact him Monday, if possible, at 465-2442 or 473-1124 to confirm a convenient meeting date? I appreciate your cooperation with Professor Svingen and any assistance your staff can offer. Thank you so much.

Sincerely,

Walter Echo-Hawk

Walter R. Echo-Hawk
Robert M. Peregoy
Attorneys for the Pawnee and
Winnebago Tribes

WRE/mdw
cc: Walter Huber, President, NSHS
Roger Welsch, NSHS Board Member
Reba White Shirt, Executive Director,
Nebraska Indian Commission

5/18/88 - Mailed to Orlan Svingen

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June 3, 1988

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Re: Tribal Research Project

Dear Mr. Hanson:

This letter follows-up on our telephone conversation yesterday regarding my May 13 letter, which requested your cooperation with Professor Svingen for research, to be done at my request, of the NSHS skeletal collection. I appreciate your cooperation in meeting with Professor Svingen this week, giving him the tour, and discussing this research project with me personally.

Based upon the above, we agreed that the most practical way to conduct the research project is as follows. First, you requested that we supply you with a list of specific research questions. Upon receipt, your staff will supply a written response to the questions and also compile the relevant files and records upon which the response is based. (Hopefully this can be completed by mid-July.) Thereafter, Professor Svingen or researchers under his supervision will be allowed an in depth examination of the records and documents compiled, with NSHS reserving the right to protect site confidentiality. Though I expect this procedure to work well, it is a compromise on my part due to the NSHS's reluctance to allow access to NSHS records by my researchers in the first instance. Nonetheless, I am more than willing to work with you on the agreed basis in the interest of acquiring the needed research data.

To initiate the agreed process, I submit the following research questions. Please do not hesitate to contact me for any clarification as may be desired by staff in supplying the responses.

1. How many human bodies (or portions thereof) are in the NSHS collection, irrespective of race or origin?

2. How many human skeletal remains or portions thereof in the NSHS collection have been identified to be Native American in origin?

3. Of the Native American remains, how many have been reasonably identified as has having a probable relationship to the following present-day Indian tribes: Pawnee, Winnebago, Ponca, Santee, Omaha, Otoe, Arikara, or other historic tribes?

4. For each Native American remain identified in response to question 3, please give the following data:

   (A) When was the approximate or estimated date or time period that the remain was originally interred;

   (B) Were any burial goods also interred with the skeletal remain that are in the NSHS collection (a description of burial goods for each is not necessary for the time being, however, inventory lists should be compiled for later researcher examination);

   (C) Who disinterred the remain, and briefly describe the circumstances under which the remain was disinterred, and give the date or dates of the disinterment;

   (D) State whether the remain was disinterred from private, state, public or federal lands;

   (E) State whether the remain was disinterred from a grave, cemetery or cemetery complex, mound, and indicate the general geographic relationship of the grave, cemetery or mound to any known associated Indian village or camp sites;

   (F) State the name or names of the donor (whether private party, archaeological team, etc.) of the remain to the NSHS, and indicate what legal title or other ownership documentation or claim of the donor to the remain donated; and

(G) For each remain, describe the basis and available documentation for the NSHS's ownership claim, if a property interest in the remain is claimed by the NSHS.

5. Please supply a list of all Native American grave goods presently on display at the NSHS museum, indicating the tribal affiliation of such goods, if known.

6. For those Native American remains disinterred within the State of Nebraska but have not been reasonably identified as having a probable relationship to the present day Pawnee Tribe, please give the following information:

(A) The reasons, rationale, and a brief summary of the evidence or data which preclude a determination that a relationship exists between the remains and the present day Pawnee Tribe, including citations to published or unpublished written works which have addressed this issue in whole or in part.

Jim, thank you for your cooperation. Because of the manner in which we have agreed to conduct the Tribes' research project, we are completely dependent upon the thorough research and response promised, and I therefore hope that the responses will be reasonably detailed. I will check with you from time to time regarding the status and progress of this phase of the agreed process; and, please let me know whether any clarification of the above is desired or whether you anticipate any problems in being able to supply the above by mid-July.

Best wishes,

Walter Echo-Hawk

Walter R. Echo-Hawk
Attorney for Pawnee and
Winnebago Tribes

WEH/mdc
Return Receipt Requested #454576

cc: Walter Huber, President, NSHS
Roger Welsch, Board Member, NSHS
Orlan Svingen
Lawrence Goodfox, Pawnee Tribe
Louie LaRose, Winnebago Tribe

RECEIVED
JUN 09 1988
NATIVE AMERICAN
RIGHTS FUND

NSHS
NEBRASKA STATE HISTORICAL SOCIETY
1500 R STREET, BOX 82554, LINCOLN, NE 68501
DIRECTOR: JAMES A. HANSON (402) 471-3270

June 6, 1988

Walter R. Echo-Hawk, Attorney
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302-6296

Dear Mr. Echo-Hawk:

Since you represent the Pawnee and Winnebago Tribes I'm disappointed that many of the questions asked in your letter are not the specific questions dealing with the tribally identified remains that we discussed. However, we will answer as many of them and in sufficient depth as is reasonably possible.

I will point out, however, that the mid-July time frame for a reply is not something we discussed or agreed to. As I informed you on the telephone, all of our archeologists are out of town working on archeological projects for the summer. Realistically, no one will be able to devote much time to your questions until after the summer excavation season is over.

With best wishes,

James A. Hanson
Director

JAH:jg
cc: Walter Huber, President,
NSHS Executive Board
Orlan Svingen
Archeology Department, NSHS

BRIEFING DOCUMENT

Kansas Unmarked Human Burial And Skeletal Remains Protection Act

House Bill No. 2704

STATE OF NEBRASKA
KAY A. ORR, GOVERNOR

July 12, 1988

Mr. Robert M. Peregoy
Attorney-at-Law
Native American Rights Fund
1506 Broadway
Boulder, CO 80302-6296

Dear Mr. Peregoy:

Governor Orr appreciates the information you have provided regarding a pending decision of the Nebraska State Historical Society. Through her representative to the Board, minutes of the Board meetings, and communications with other interested individuals, the Governor has been apprised of the call by the Winnebago Tribe of Nebraska and the Pawnee Tribe of Oklahoma for the return of identifiable Indian skeletal remains and burial goods.

The decision in this matter between the Tribe and the Nebraska State Historical Society is in the hands of the voting members of the Board. According to your letter you anticipate that a decision on such policy will be made by the Board at the October 8, 1988, meeting in Lincoln. Governor Orr will not be able to attend that meeting; therefore, discussion with the Governor would not be of any additional benefit.

As you know, the members of the Nebraska State Historical Board are not appointed by the Governor, but are elected by Congressional district by the 5000 members of the Society.

Cordially,

Huston T. Carlisle, Jr.
Chief of Staff

HTC:mk

OFFICE OF THE GOVERNOR, BOX 94848, LINCOLN, NEBRASKA 68509-4848, PHONE (402) 471-2244
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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I. BACKGROUND AND HISTORY OF THE BILL

While the State of Kansas has always had adequate statutes for the protection of cemeteries and interred dead human bodies, no such protection exists for older, unmarked human burials located within the State. Unregulated excavation and exhibition of this unprotected class of human remains have caused serious concern among the Kansas scientific community and the American Indian community.

Unlicensed and unregulated activity by pot hunters and so-called "amateur archaeologists" has caused irreparable damage to the state's historical heritage. Those same activities are correctly viewed as grave desecration and desecration of human bodies by affected American Indian descendants, which is compounded by feelings of unfairness when they see that K.S.A. 21-4115 and 21-4112 strictly prohibit this activity for more recent cemeteries with traditional markings (i.e., tombstones, monuments, etc.).

A clear example of the problem is illustrated by the "Indian Burial Pit," located near Salina, Kansas. The "Indian Burial Pit" is a privately-owned Indian cemetery containing about 146 persons. The owners unearthed the cemetery, removed most of the burial goods, and charge public admission to view the 146 bodies--who are most likely ancestors of the present-day Pawnee, Wichita or Arikara Indian Tribes. Even though this deplorable situation has been unanimously condemned by these

Tribes, church groups, citizens and the Kansas scientific community, little can be done because the Kansas Attorney General has determined that there is a loophole in the law concerning the matter. (See Attachments 1, 2).

In response to public criticism of the "Indian Burial Pit," the University of Kansas and Haskell Indian Junior College hosted a seminar in January, 1986, to discuss related scientific, moral, religious and legal issues. After two days of discussions, the scientists, historians, legislators and tribal leaders agreed that the "Indian Burial Pit" should be remedied and that protection legislation was needed.

The impetus for that legislation was made greater when the Attorney General issued an opinion holding that existing law did not apply (Attach. 1). He concluded by stating:

> . . . I will recommend that legislation be passed in Kansas, based on similar statutes in other states, which will specifically apply to the discovery, public display and reinterment of ancient human remains.

(Id.) A "writing committee" was formed, chaired by Dr. Al Johnson of the University of Kansas Museum of Anthropology, and composed of various scientific and tribal leaders.

The Kansas Unmarked Human Burial and Skeletal Remains Protection Act, House Bill No. 2704 (Attach. 3) is the product of two year's effort to address in a responsible manner a glaring loophole in Kansas law. The bill embodies the best of 12 similar statutes recently enacted by other states on the same subject,[1] and was specifically tailored for Kansas in consultation with the Attorney General's Office and the Revisor of Statutes Office. The Bill protects important scientific and education interests through procedures recommended by the Kansas State Historical Society, the State Archaeologist and the University of Kansas Museum of Anthropology. And, the Bill contains a public policy and set of protections fully supported by Kansas citizens most directly affected--the American Indian community.

II. DESCRIPTION, PURPOSE AND INTENT OF THE BILL

The Bill establishes procedures regarding disturbance, treatment and disposition of human remains from unmarked graves, prohibits certain acts, and protects all legitimate interests in unmarked burials located within the State of Kansas (Sec. 2). The provisions of the Act are carried out by a Board attached to the Kansas State Historical Society that is chaired by the State Archaeologist (Sec. 4). Activity that is presently prohibited in regard to more recent cemeteries and human bodies is generally extended to unmarked burials (Sec. 5). Public displays may be done for educational or medical purposes only by qualified institutions with a permit from the Board (Sec. 6). Procedures are established for accidental discoveries of unmarked burials (Sec. 7). Public and private enforcement provisions are contained in Sections 8 and 9. Section 10 provides for fines and punishment for violation of prohibited acts. And Sections 11-12 incorporate the Bill into existing relevant Kansas statutes.

---

[1] Those states are: Missouri (1987), Oklahoma (1987), Florida (1986), Idaho (1984), Massachusetts (1983), North Carolina (1981), Minnesota (1976), California (1976), Iowa (1975), Maine (1974), Wisconsin (1985), and Washington (1977). This legislation is in response to the growing problem of Indian grave robbing problems in these states. See Attach. 9, Newspaper Article.

In short, the Bill provides responsible remedies for addressing the "Indian Burial Pit" and clear policy guidelines for the future. As such, the Bill extends present legal protections under Kansas law for recent cemeteries, graves and dead bodies to older, unmarked burials.[2/]

III. NEED FOR LEGISLATION

The need for responsible legislation in this area is apparent. The "Indian Burial Pit" has been an embarrassment for many years. (See Letter, Lutheran Church, 1972, Attach 4). There is a loophole in existing Kansas statutes identified by

---

[2/] Even though the extension of these protections for unmarked burials will necessarily limit some unlicensed private activities in the future, such as the "Burial Pit," these prohibited activities are necessary to protect the public health, safety and morals--and are not legally deemed "a taking of property for which compensation must be paid" under the Supreme Court decision in Mugler v. Kansas, 123 U.S. 623, 31 L.Ed. 205 (1887).

the Attorney General, which has led to this deplorable situation. (See, Attach. 1-2). Other states have addressed this issue in a responsible manner after similar problems were identified. (See, Note 1, supra, and attachment 9). Moreover, the federal government has recently updated its antiquity statutes for federal lands to better protect scientific and American Indian religious interests. See Archaeological Resources Protection Act of 1979, 16 U.S.C. §§ 470aa et seq.

Kansas has a rich historical and prehistorical heritage that deserves protection. Equally important are deep religious feelings and respect for the dead held by Kansas Indians, both present day residents and former tribes of Kansas, which are entitled to the same protections we accord to our own people under basic notions of decency. See Attach. 9 - Sacred Plunder.

IV. SUPPORT FOR THE BILL

The Bill has engendered wide support. The consensus from the January, 1986, symposium finds explicit and further support from the following diverse sources:

1. Attorney General (Attach. 1, 5, 7)
2. State Archaeologist (Attach. 8)
3. University of Kansas (Attach. 6)
4. Pawnee Tribe of Oklahoma (Attach. 10)
5. Wichita Tribe of Oklahoma (Attach. 11)
6. Three Affiliated Tribes (Attach. 12)
7. Sac & Fox Tribe, Kansas (Attach. 13)
8. Iowa Tribe of Kansas (Attach. 14)
9. Prairie Band of Potawatomi Tribe (Attach. 15)

Your informed support is needed and respectfully requested for the passage of this important legislation.

For further information concerning the Bill (HR 2704), please feel free to contact the following legislators and supporters:

Hon. Betty Jo Charlton
House of Representatives
State Capitol Building
Room 272-W
Topeka, KS 66612
Phone: (913) 843-5024

Hon. Jayne Aylward
House of Representatives
State Capitol building
Room 182-W
Topeka, KS 66612
Phone: (913) 296-7681

Dr. Al Johnson
University of Kansas
Museum of Anthropology
Lawrence, KS 66045
Phone: (913) 864-4245

Dan Wildcat
815 Louisiana
Lawrence, KS 66044
(913) 843-2259 (evening)

Walter R. Echo-Hawk
Native American Rights Fund
1506 Broadway
Boulder, CO 80302
Phone: (303) 447-8760

COPY

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

March 14, 1986

Joseph W. Snell
Executive Director
Kansas State Historical Society
120 West 10th Street
Topeka, Kansas 66612

Dear Mr. Snell:

Thank you for your letter dated February 20, 1986, regarding the public display of Indian skeletal remains at the Indian Burial Pit. I want you to know how much I deplore the activity which is occurring at the burial pit, and that I realize the display is offensive to native Americans and to many other people. Unfortunately, although I would like to help, I am extremely limited in any legal action which I can take to alleviate this problem. I reach this result because unlike several other states, Kansas has not enacted any legislation which specifically applies to the discovery, public display or reinterment of ancient human remains.

As you are probably aware, our criminal statutes must be strictly construed in their application, so as to carry out the specific intent of the legislature. After careful research, I am unable to conclude that the public display of ancient human remains is a violation of K.S.A. 21-4115. The statute applies to desecrating a cemetery; the owner has not destroyed or removed any of the remains, but has simply uncovered them so that they are exposed. Furthermore, I question whether the property can be defined as a cemetery, since the burial pit is located on private land, contains none of the traditional markings of a cemetery (i.e., tombstones, monuments, etc.), and has been operated as a tourist attraction for over 50 years. Finally, I am informed that the remains in question are so old (approximately 700 years) that a court could well find that the area has lost the character of a cemetery.

In my opinion, there are two options which may be considered. First, the state could institute a proceeding to condemn the land, in which case the property will be owned by the state and preserved by the Kansas State Historical Society. Second, I will recommend that legislation be passed in Kansas, based on similar statutes in other states, which will specifically apply to the discovery, public display and reinterment of ancient human remains.

In conclusion, it is my opinion that criminal prosecution of the owner of the Indian Burial Pit under K.S.A. 21-4115 is not legally feasible. However, as I have indicated in this letter, I am anxious to pursue one of the other aforementioned alternatives in order to stop its operation. Please feel free to contact me if you would like to set up a meeting regarding this matter.

Very truly yours,

ROBERT T. STEPHAN
Attorney General

RTS:BPA:jm
cc: Walter Echo-Hawk
Robbi Ferron
Representative Jane Aylward
Mr. Howard T. Hill

June 4, 1986

MEMORANDUM

TO: ROBERT T. STEPHAN

FROM: JOHN W. CAMPBELL

RE: Indian Burial Pit, Saline County, Kansas

The following is a summary of the facts and law surrounding the controversial operation of the commercial interest known as the Indian Burial Pits. In addition, options for future action are discussed.

I. FACTS*

The Indian Burial Pit is a commercial operation. Its business since 1937 has been the public display of 700-year old Indian skeletal remains and artifacts. The business is located on private property over what was at one time an active Indian burial ground. The remains have been excavated, preserved, and are currently enclosed within several buildings. Thousands of people come each year to the site to view the remains, at a cost of $1.50 for adults and $0.75 for children. The area was designated a National Historic Landmark by the National Park Service in 1964. More recently, both Indian and non-Indians have expressed objections to the site. These objections are based primarily on moral and philosophical grounds to such sites in general, as opposed to the specific characterists of this particular site.

II. LAW

Neither the Kansas Legislature nor the courts have dealt directly with the issue of Indian gravesites. Furthermore, inasmuch as the Indian Burial Pit, hereafter referred to as the "site," is on private property, there are no federal laws which govern its operations (see, National Historic Preservation Act, 16 U.S.C.A. 470; Executive Order No. 11593; Archeological Resources Protection Act, 16 U.S.C.A. 470aa; and Crow v. Gullett, 541 F.Supp. 793 (D.S.D. 1982). For those reasons, I am of the opinion that state legislative action in this area should be secured prior to court action by this office.

---

*Reports on the site have been compiled by the Kansas State Historical Society, the Division of Architectural Services, various publications and, most recently, at a symposium on the subject of Indian graves conducted by Haskell Indian Junior College and the University of Kansas.

III. OPTIONS CONSIDERED

A. Criminal Proceedings

1. K.S.A. 1985 Supp. 21-4115

K.S.A. 1985 Supp. 21-4115 states:

> Desecrating a cemetery is knowingly and without authorization of law:
>
> (a) Destroying, cutting, mutilating, defacing, or otherwise injuring, tearing down or removing any tomb, monument, memorial or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or any property in a cemetery;
>
> (b) obliterating any grave, vault, niche or crypt; or
>
> (c) destroying, cutting, breaking or injuring any building, statuary, ornamentation, tree, shrub or plant within the limits of a cemetery.
>
> Desecrating a cemetery is a class A misdemeanor.

It was suggested that the owner/operator of the site could be prosecuted pursuant to this statute. In the Attorney General's letter to Joseph Snell, Executive Director, Kansas State Historical Society of March 14, 1986, this idea was rejected. I endorse that rejection and would add the following reasons for its rejection:

a. The crime of desecrating a cemetery became law in 1971. (See, 1971 Kan.Sess.Laws, Ch. 109, S1.) The activities at the site which could arguable fall under this statute occurred in 1937 with the excavation of the area. Criminal statutes cannot be applied retroactively.

b. The 2-year statute of limitations (K.S.A. 21-3106) bars prosecution of a 1937 offense.

c. The statute is silent on the issue of public display of skeletal remains. Criminal statutes are strictly construed. A crime of public display cannot be implied.

2. K.S.A. 21-4112

K.S.A. 21-4112 states:

> Desecrating a dead body is knowingly and without authorization of law:
>
> (a) Opening a grave or other place of interment or sepulcher with intent to remove the dead body or remains of any human being or any coffin, vestment or other article interred with such body; or
>
> (b) Removing the dead body or remains of any human being, or the coffin, vestment or other article interred with such body, from the grave or other place of interment or sepulcher; or
>
> (c) Receiving the dead body or remains of any human being knowing the same to have been disinterred unlawfully.
>
> Desecrating a dead body is a class B misdemeanor.

However, many of the problems which plagued K.S.A. 1985 Supp. 21-4115 also block enforcement of this statute for known past acts. These problems include retroactivity, statute of limitations, and silence on the issue of public display.

I do not believe that criminal prosecution at this time is a viable option. No court in the county has ever used such statutes to close such an operation, even though advocates of Indian rights have noted its possible use. (See, American Indian Law Review, Vol. 10, p. 112.) However, I would note K.S.A. 1985 Supp. 21-4112 might prevent future removal of artifacts by private individuals.

B. Civil Litigation

1. Abatement of Common Nuisance

I would recommend against a nuisance suit without specific statutory authority. Such authority which could deal with the complicated and controversial debate between the Indians and those legitimate archeologists who truly are advancing historical and scientific research. A suit without such a statute would leave the court without the law necessary to decide the case. In addition, without a statute, there is little likelihood of resolving the differences between Indians with religious, cultural, and political agendas and scientists with very different interests.

2. K.S.A. 75-2725

K.S.A. 75-2725 states:

> The state of Kansas or any county, municipality or other political subdivision having capacity to sue and be sued, the Kansas state historical society and any city or county historical society which, for more than two (2) years prior to filing such action, has been organized, has elected officers and has received compensation, funds or reimbursements from a city or county pursuant to K.S.A. 12-1660 or 19-2649, and amendments thereto, may maintain an action in the district court having jurisdiction where an alleged violation occurred or is threatened for such equitable and declaratory relief as may be necessary to enforce the provisions of this act and to protect historic property from unauthorized or improper demolition, alteration or transfer.

At this time, I know of no acts on the part of the owner/operator of the Indian Burial Pits which would allow an action pursuant to the act. Again, as with the criminal statutes, the time since the excavations (1937) is too great. Furthermore, the state historical society is on record as stating the site is well-preserved.

However, I mention this statute primarily as a defense mechanism against the owner/operator's future actions. With growing pressure to close the Indian Burial Pits, the temptation to sell artifacts and even remains will grow. If such activity does take place, this statute might be employed. (See also, K.S.A. 21-4112.)

IV. RECOMMENDATIONS

In conclusion, I would repeat that legislative action is the only viable path to resolving this matter.

Session of 1988

HOUSE BILL No. 2704

By Committee on Federal and State Affairs

1-26

AN ACT relating to certain burial sites; creating an unmarked burial sites preservation board; prescribing powers and duties thereof; providing funding therefor; making certain acts unlawful and prescribing penalties therefor; amending K.S.A. 20-2801 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. This act shall be known and may be cited as the Kansas unmarked human burial and skeletal remains protection act.

New Sec. 2. (a) The legislature finds that:

(1) Existing state laws do not provide adequate protection for unmarked human burials and skeletal remains; and

(2) there is no procedure regarding the treatment and disposition of human skeletal remains from unmarked graves necessary to protect the interests of descendants or other interested persons.

(b) The purposes of this act are to:

(1) Provide adequate protection for unmarked human burial sites and human remains located on all private or public lands within the state of Kansas;

(2) prohibit disturbance of unmarked human burial sites; and

(3) provide procedures for the proper care and protection of unmarked human burial sites and skeletal remains found in the state of Kansas.

New Sec. 3. As used in this act:

(a) "Unmarked human burial" means any interment by whatever means of human skeletal remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased.

(b) "Human skeletal remains" means any part of the body of a human being that has been dead for 50 years or longer in any stage of decomposition.

(c) "Board" means the unmarked burial sites preservation board.

(d) "Person" means an individual, corporation or unincorporated association.

New Sec. 4. (a) There is hereby created an unmarked burial sites preservation board to be attached to the state historical society, which shall consist of the following members: (1) The state archaeologist; (2) a physical anthropologist selected by the governor from one of the state's academic institutions; (3) an historian selected by the governor from the staff of the state historical society or one of the state's academic institutions; (4) four tribal representatives, one from each of the four resident Kansas Indian tribes, to be selected by the governing bodies of such tribes; and (5) two members appointed by the governor who are neither American Indians nor professional anthropologists. The state archaeologist shall serve as chairperson of the board.

(b) The board shall have the following powers and duties:

(1) To create and maintain a registry of unmarked human burial sites. The board shall notify landowners on whose property such burial sites are located and identify, to the extent possible, persons or groups most likely descended from the deceased person or persons interred on that property;

(2) to consult with all interested parties on occasions of threatened or potential disturbance of unmarked human burials to determine a proper course of action;

(3) to initiate necessary action by the attorney general for the enforcement of this act;

(4) to have jurisdiction and authority to issue permits regarding the disposition, study and display of human skeletal remains from unmarked burials as provided in this act; and

(5) to promulgate rules and regulations necessary to carry out the board's duties and responsibilities under the provisions of this act.

(c) Appropriations shall be made to the state historical society under this act for the following purposes: (1) To create and maintain a registry of unmarked human burial sites; (2) to reimburse board members and consultants for actual expenses and subsistence allowances incurred in carrying out duties of the board; (3) for the investigation, recovery and scientific study of accidentally discovered human burials as may be permitted under this act; and (4) for reinterment of human burials or skeletal remains under the provisions of this act. In addition to moneys appropriated to the state historical society, the proceeds from any fines, penalties or forfeitures arising from violations of this act shall be remitted to the state treasurer, who, upon receipt of any such remittance shall deposit the same in the state treasury to the credit of the unmarked burial sites preservation fund to be used for the purposes enumerated above. All expenditures from the unmarked burial sites preservation fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the state historical society or a person designated by the secretary.

New Sec. 5. (a) No person, except in accordance with the provisions of this act, shall:

(1) Willfully remove, mutilate, deface, expose or destroy an unmarked human burial site;

(2) possess any human skeletal remains, or articles interred therein, from an unmarked human burial;

(3) publicly display or exhibit any human skeletal remains; or

(4) sell, trade or give any human skeletal remains or interred goods obtained from an unmarked human burial.

(b) Any person who knows or has reason to know that an unmarked human burial or human skeletal remain is being treated contrary to the provisions of this act shall immediately notify the local law enforcement agency of the jurisdiction where such treatment occurred. On notification of violations of this act from local law enforcement agencies, the state archaeologist will assume jurisdiction over the human skeletal remains and any interred burial goods for disposition under the provisions of this act.

New Sec. 6. (a) Public displays or exhibits of human skeletal remains, or goods interred with the dead, may be made only with a permit from the board for medical or educational purposes by a qualified medical or educational institution. When skeletal remains can, unquestionably, be identified with a historically known American Indian tribe, decisions as to display shall be made by the tribe.

(b) Reinterment of human skeletal remains or goods interred with unmarked human burials that are displayed or exhibited in violation of this act shall be done by the state archaeologist under the direction of the board.

New Sec. 7. (a) On notification of the accidental discovery of human skeletal remains from unmarked human burials, the skeletal remains and any goods interred with the burial shall be reinterred by the state archaeologist under the direction of the board, to be done in consultation with interested parties and pursuant to the rules and regulations of the board. The remains may be retained under the control of the state historical society for a one-year period for scientific study under the jurisdiction of the state archaeologist. On application, the board may extend the study period for an additional six months. Following the scientific study, the human remains and burial goods, if any, shall be reinterred by the state archaeologist under the direction of the board.

(b) No person may knowingly cause or permit the disturbance of an unmarked human burial in the state of Kansas without a permit from the board for scientific or educational purposes and upon such terms, conditions and procedures as the board may prescribe. All permits issued by the board shall provide for reinterment at a specific date at the expense of the applicant.

New Sec. 8. Upon request of the board, the attorney general shall aid in any investigation, inspection, hearing or trial had under the provisions of this act and shall institute and prosecute all necessary actions or proceedings, including eminent domain, for the enforcement of such provisions and for the punishment of violations of the same. The attorney general shall report to or confer with the board regarding the request within 30 days after receipt of the request.

New Sec. 9. Any person who violates any provisions of this act may be liable for injunctive relief, damages and attorney fees or other appropriate relief to any person or persons with a kinship, cultural, tribal, scientific or educational interest in preserving the effected unmarked human burial or skeletal remains and burial goods.

New Sec. 10. (a) Any person who fails to report the disturbance of a burial site as required under subsection (b) of section 5, upon conviction thereof, shall be fined not less than $100 nor more than $500.

(b) Any person who intentionally disturbs a burial site in violation of subsection (a)(1) of section 5 which is not listed on the registry of unmarked human burial sites, upon conviction thereof, shall be fined not less than $500 nor more than $1,000.

(c) Any person owning land upon which an unmarked human burial is located who intentionally causes or permits any activity which disturbs an unmarked human burial site after receiving notice from the board under subsection (b)(1) of section 4, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000.

(d) Any person who intentionally causes or permits any activity which disturbs a burial that is listed on the registry of unmarked human burial sites without a permit issued by the board under subsection (b) of section 7, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000.

(e) Any person who disturbs a burial site for commercial gain not related to use of the land where the burial site is located or who disturbs a catalogued burial site for commercial gain related to use of the land where a burial site is located in violation of this section, upon conviction thereof, may be fined not to exceed two times the gross value gained or two times the gross loss caused by the disturbance, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred, or be imprisoned for not more than one year in the county jail, or both. In calculating the amount of the fine based on the personal injury, any measurement of pain and suffering shall be excluded.

(f) Any person who violates subsection (a)(2) of section 5, upon conviction thereof, shall be fined not less than $500 nor more than $1,000.

(g) Any person who violates subsection (a)(3) of section 5, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000, or be imprisoned for not more than one year in the county jail, or both.

(h) Any person who violates subsection (a)(4) of section 5, upon conviction thereof, shall be fined not less than $500 nor more than $5,000, and the amount received from the sale or trade of human skeletal remains or goods interred from an unmarked burial.

Sec. 11. K.S.A. 20-2801 is hereby amended to read as follows: 20-2801. (a) At least monthly the clerk of the district court shall remit all moneys payable to the state treasurer from fines, penalties and forfeitures to the state treasurer, and the state treasurer, *except as otherwise provided in subsection (c) of section 4,* shall deposit the same in the state treasury to the credit of the state general fund.

(b) The director of accounts and reports or the state treasurer, whenever it is deemed necessary by either of ~~said~~ *such* officers in order to determine the amount available under this section, may request of clerks of the district court or any one or more of them the information indicated herein. Within ~~ten (10)~~ *10* days of the receipt of any such request, each clerk receiving the same shall certify the amount of moneys collected to which this section applies to the director of accounts and reports and the state treasurer.

(c) This section shall not apply to municipal courts.

Sec. 12. K.S.A. 20-2801 is hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

APPENDIX B

CORRESPONDENCE RELATING TO AMERICAN LUTHERAN CHURCH'S OBJECTION TO BURIAL PIT.

OFFICE: 3701 Akron
Denver, Colorado 80211
PHONE: 303 433-8417

PASTOR ARCHIE L. MADSEN
President

the american lutheran church
central district

Pastor Paul G. Johnsbury
Pastor Chilton E. Osborn
Assistants to the President
Mr. William Hahn
Administrative Assistant

Lincoln, Nebraska
June 7, 1972

RECEIVED
JUN - 8 1972
OFFICE OF THE GOVERNOR

Governor Robert Docking
Capitol Building
Topeka, Kansas 66612

Dear Honorable Governor:

I write as Secretary of the Central District of The American Lutheran Church to call your attention to a situation that concerns us. At our recent District Convention, held at Dana College, Blair, Nebraska, May 25-27, the following resolution was approved:

> Whereas the Central District of the American Lutheran Church has planned its Theological Conference in Salina, Kansas in October 1972; and
>
> Whereas the American Indians are working to close the Indian Burial Pit in Salina, Kansas because;
>
> 1. The burial ground according to archaeologists of Kansas University is of no archaeological value.
>
> 2. The viewing of the Indian skeletons is quite contrary to the spiritual beliefs of the Indians, and
>
> Whereas we as Christians believe in the sanctity of the whole man and therefore reject the exploitation involved in the display of skeletons and bones; and since this cemetery is kept open for purely commercial reasons;
>
> Therefore be it resolved that the Central District Convention memorialize the Executive Committee of the Central District not to hold the 1972 Pastor's Theological Conference at Salina, Kansas until such time as the Indian Burial Grounds are closed to the satisfaction of the Indian-Americans.
>
> Be it further resolved that the Secretary of the Central District send letters stating our position and reasons for not holding the Pastor's Conference in Salina to the Mayor and City Council of Salina; to Gov. Robert Docking, Governor of Kansas; to the Manager of the Hilton Inn in Salina; and to the Salina Journal, the Wichita Eagle-Beacon, the Topeka Daily Capitol, and the Kansas City Star.

Be it further resolved that the people of the congregations of the Central District be encouraged to oppose similar offensive and oppressive actions against the Indian-Americans wherever they may take place.

This is shared with you - at the direction of the Convention - in the confidence that you care also, and with the hope that you might feel constrained to become involved as well in this issue.

Sincerely,

Robert O. Berthelsen,
Secretary

ROB:m

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

December 29, 1986

Mr. Alfred E. Johnson
The University of Kansas
Museum of Anthropology
Lawrence, Kansas 66045

Dear Mr. Johnson:

I was pleased to receive a copy of your memorandum of December 12, 1986, concerning a draft of a Bill on Unmarked Human Graves. Please be assured that my interest and the interest of Assistant Attorney General Barbara Allen continues in regard to the Indian grave sight in Salina, Kansas.

I would like to assist in anyway possible in regard to both the drafting of legislation and in supporting its passage. Both Ms. Allen and I will be pleased to respond in anyway. I would appreciate receiving progress reports as well as a copy of the draft Bill being considered.

Very truly yours,

Robert T. Stephan

Robert T. Stephan
Attorney General

RTS:dp
cc: Barbara Allen, Asst. AG, Civil
Walter Echo Hawk

ACTION OFFICE

THE UNIVERSITY OF KANSAS
KANU/KFKU
Broadcasting Hall
Lawrence, Kansas 66045-2072
(913) 864-4530

April 28, 1986

Kathy L. Kruzic, Director
Division of Travel, Tourism and Film Services
Kansas Department of Economic Development
400 West 8th, 5th Floor
Topeka, KS 66603

Dear Kathy:

I have become increasingly concerned, as have many others, about the commercially operated "Indian Burial Pit" near Salina. I am also interested in the formation of State policy regarding burials which may be discovered in the future. You may be aware that a symposium, jointly sponsored by the University of Kansas and Haskell Indian Junior College, was held earlier this year. It attracted Native American legal and tribal leaders and leading anthropologists from around the country. This symposium has led to an effort to draft legislation which may be introduced in the Kansas legislature. This legislation would attempt to accomodate the interest of Native Americans and anthropologists as burials are discovered in the state.

While Native Americans and anthropologists have a good deal of room for discussion on the issue of burials, the symposium produced unanimity on one question: the commercial "Burial Pit" near Salina. The participants felt strongly that it should be shut down as soon as possible. It was felt that the display of human remains is wrong and an affront to the dead and the living. The commercial exploitation of the Salina site is even more repugnant. Some of the participants felt that a Kansas law prohibiting desecration of cemetaries could be applied. The State Historical Society inquired, but Attorney General Robert Stephan said that criminal law must be strictly construed and that the statute does not apply in this case.

Mr. Stephan met with tribal leaders and KU anthropologists recently and pledged to do two things on his return to Topeka. First, he said he would search the statutes to see if any are applicable to the Salina situation which he deplores as much as those of us who have visited it. Second, he said he would work with those who are attempting to draft legislation covering this and other burial sites in Kansas.

At least three members of the Legislature have indicated their interest in the Salina site and the general question of burials. Representatives Jayne Aylward, in whose district the Salina site is located, and Representatives Betty Jo Charlton and Jessie Branson of Lawrence attended the symposium at Haskell earlier this year.

As you know, three publications, The Visitor's Guide, Children's Guide and the 125th Anniversary "Fun Map" all contain references to the Salina site. In addition, the two guides have incorrect information about the site. Anthropologists who have studies the situation agree that the people buried at Salina are of average height, not over six feet as claimed by the owners of the burial site. The incorrect measurement was taken by the amateurs who discovered and commercialized this site. The map contains a drawing which those of us who have seen the site find quite offensive. I hope you agree that this site should not be publicized by the State.

Of course, it is too late to do anything about current editions of these publications, but I did want you to know about the current interest in the burial site question. My hope is that the site will soon be closed. If the State purchases the site in the future and develops it in a tasteful way, as it has the Pawnee Indian Village Museum at Republic, publicity would be appropriate.

While I'm on the subject, all three publications refer to another objectionable item, the "Last Indian Raid" near Oberlin. This perpetuates the image of Native Americans as savages who attacked peaceful settlers who were simply trying to establish homesteads, raise families and crops. Of course, the truth is that most of the Native Americans in Kansas had been forced from their own lands where they lived peaceably. Many times, they were the victims of massacres and brutality at the hands of the white man. My suggestion is that no reference be made to this so-called raid. Failing that, a more historically accurate description would be appreciated.

Thanks for reading all of this. If you would like to discuss these matters further, please give me a call. I would also be pleased to give you names of the symposium participants who can provide additional insights.

Sincerely,

Howard

Howard T. Hill, Jr.
Director

cc: Dr. Gerald Gipp, President, Haskell Indian Junior College
✓Robbi Ferron, Director, Affirmative Action, KU
Dr. Alfred Johnson, Chairman, Anthropology Department, KU

Interior Establishes Reservation for Cow Creek Band of Indians:

Twenty-eight acres of land in Douglas County, Oregon has been taken in trust by the United States and established as a reservation for the Cow Creek Band of Umpqua Indians, a tribe recently granted federal recognition and restored services and benefits under Public Law 97-391. The band, which had been landless, purchased the property in fee in December of 1984. The property contains several improvements, including a seven-unit motel, a 22-unit mobile home park, two single family dwellings and one commercial structure. The band indicated it intends to renovate and reopen the motel and mobile home park. Plans for the site also include tribal headquarters, a public health facility, tribal housing, a convenience store and a day-care center. The establishment of this reservation is a first step in replacing the band's former reservation land, lost in the late 1880's.

Alaska Native Corporation Makes Another Investment in Virginia Property:

The Cook Inlet Regional Corporation of Alaska Natives has made a bid of $10.1 million to take over a 107-acre parcel of land at Fort Belvoir, Virginia. This is the second major investment the corporation made in the State of Virginia. Two years ago the corporation acquired for $14.2 million, the old Ford Motor Company plant, a key part of Alexandria, Virginia's developing waterfront. Cook Inlet is one of 13 regional native corporations, established by Congress in 1971 through the Alaska Native Claims Settlement Act. The act allowed Native groups to reclaim their aboriginal land taken by the federal government. Unlike some of the other corporations which suffered high risk failures, Cook Inlet has prospered. The corporation has lucrative oil and gas mineral rights, drilling ventures, a construction company, real estate and a television station. Through settlement, the Cook Inlet Regional Corporation was granted $78 million in cash and entitlements to 2.3 million acres of Alaskan tundra, valued initially at $500 an acre. The Anchorage Daily News has valued Cook Inlet's assets at about $200 million, not including oil and gas interests.

Tribe Seeks Indian Grave Looters:

A reward of $1,000 is being offered by the Ute Indian Tribe for information leading to the arrest and conviction of those responsible for looting Indian graves on the Uintah and Ouray Indian Reservation in Utah. Everett Littlewhiteman, supervisory criminal investigator for the BIA said a half-dozen graves were left open in a remote part of the reservation. Some of the graves date back more than 100 years. "Beads were scattered around, so there obviously was some beadwork (taken by grave robbers)."

Minnesota Reservation To Expand Tribal Enterprises:

The White Earth Indian Reservation and the Honeywell Defense System Division of Minneapolis, Minnesota have developed a cooperative working relationship directed at fostering the economic climate and general ability of the White Earth Garment Manufacturing and Ojibway Forest Products. (Two tribally owned enterprises.) The development projects' primary focus is to expand the production facilities, and assist to develop a business base within the governmental market. The total project cost for expansion of both facilities is $380,00. Funds to support this project come from the tribe, state, Honeywell and the BIA grant program. Chairman Darrell Wadena states construction is underway and is very appreciative of the Honeywell project team members who are providing consultation, training and advice to these two tribal enterprises.

APR 1986
AFFIRMATIVE
ACTION
OFFICE

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

April 18, 1986

Mr. Robbi Ferron, Director
The University of Kansas
Office of Affirmative Action
308 Strong Hall
Lawrence, Kansas 66045

Dear Robbi:

Thank you for your letter of April 15, 1986, advising you would be the contact person in regard to our ongoing efforts to stop the viewing of the burial site in Saline County. You can be assured of my dedication to alleviate this very serious problem. It is demeaning to the Native Americans of our country, as well as to all Kansas citizens to allow this display to continue.

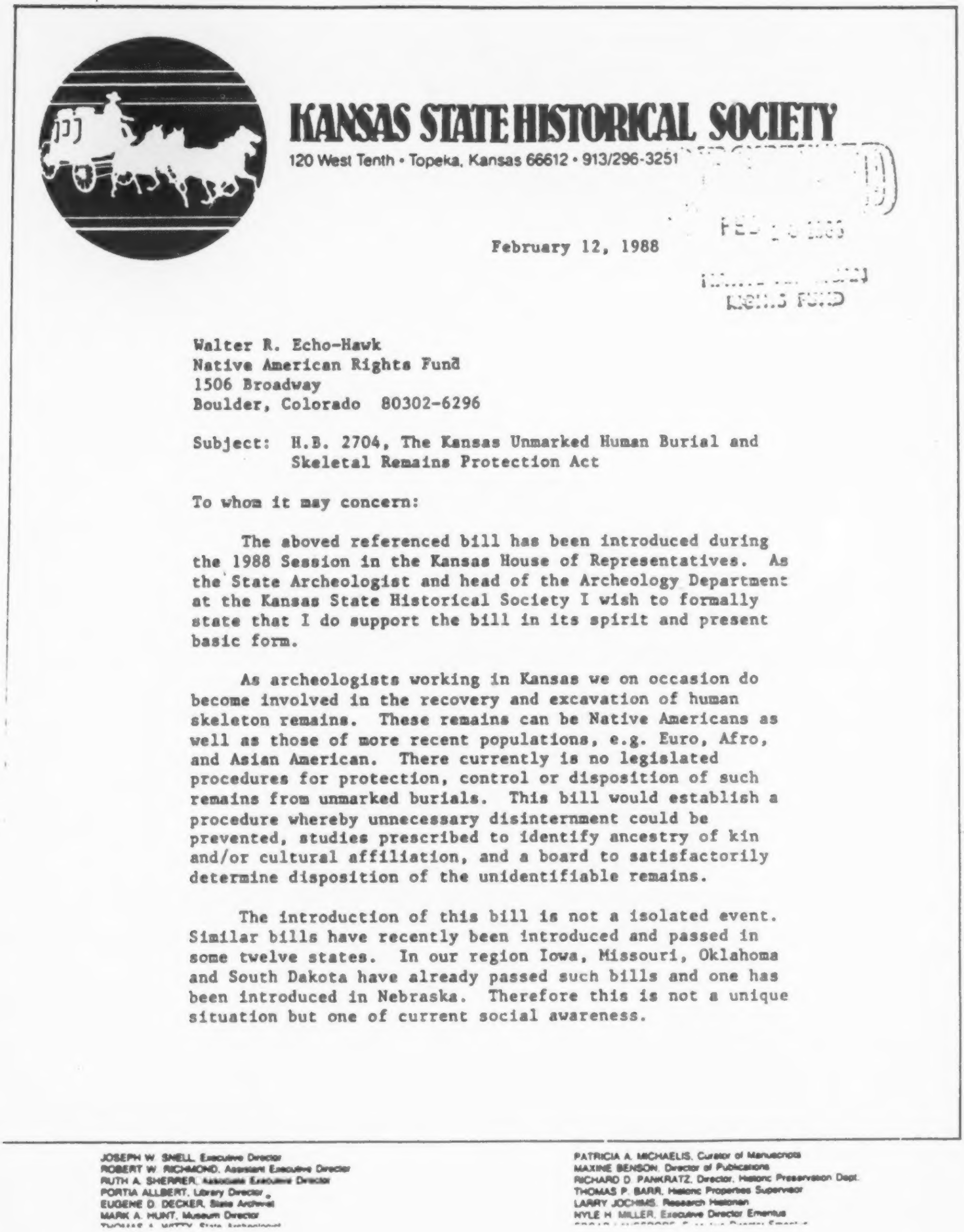
Barbara Allen and I will continue to lend our efforts toward researching the legal issues as well as assisting in the legislation. We will be in touch.

Sincerely,

Robert T. Stephan

Robert T. Stephan
Attorney General

RTS:dp
cc: Barbara Allen, Asst. Attorney General, Civil



KANSAS STATE HISTORICAL SOCIETY
120 West Tenth • Topeka, Kansas 66612 • 913/296-3251

FEB [illegible]
[illegible] RIGHTS FUND

February 12, 1988

Walter R. Echo-Hawk
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302-6296

Subject: H.B. 2704, The Kansas Unmarked Human Burial and
Skeletal Remains Protection Act

To whom it may concern:

The aboved referenced bill has been introduced during the 1988 Session in the Kansas House of Representatives. As the State Archeologist and head of the Archeology Department at the Kansas State Historical Society I wish to formally state that I do support the bill in its spirit and present basic form.

As archeologists working in Kansas we on occasion do become involved in the recovery and excavation of human skeleton remains. These remains can be Native Americans as well as those of more recent populations, e.g. Euro, Afro, and Asian American. There currently is no legislated procedures for protection, control or disposition of such remains from unmarked burials. This bill would establish a procedure whereby unnecessary disinternment could be prevented, studies prescribed to identify ancestry of kin and/or cultural affiliation, and a board to satisfactorily determine disposition of the unidentifiable remains.

The introduction of this bill is not a isolated event. Similar bills have recently been introduced and passed in some twelve states. In our region Iowa, Missouri, Oklahoma and South Dakota have already passed such bills and one has been introduced in Nebraska. Therefore this is not a unique situation but one of current social awareness.

JOSEPH W. SNELL, Executive Director
ROBERT W. RICHMOND, Assistant Executive Director
RUTH A. SHERRER, Associate Executive Director
PORTIA ALLBERT, Library Director
EUGENE D. DECKER, State Archivist
MARK A. HUNT, Museum Director

PATRICIA A. MICHAELIS, Curator of Manuscripts
MAXINE BENSON, Director of Publications
RICHARD D. PANKRATZ, Director, Historic Preservation Dept.
THOMAS P. BARR, Historic Properties Supervisor
LARRY JOCHIMS, Research Historian
NYLE H. MILLER, Executive Director Emeritus

Walter R. Echo-Hawk
February 12, 1988
Page Two

Should there be any questions or comments concerning this issue I would be very glad to respond.

Yours truly,

Thomas A. Witty, Jr.
State Archeologist

TAW:dlb

The Tulsa Tribune

1 *final* TULSA, OKLAHOMA, FRIDAY, MARCH 4, 1988 35¢

Tribune photo by Mike Wyke

Pawnee tribal chairman Lawrence Goodfox inspects desecrated burial grounds.

Sacred plunder

Artifacts market drives desecration of Indian graves

SANDI McDANIEL
Tribune Writer

PAWNEE — But for the crow and the wind, the burial mounds are mute, their tall grass blanketing generations of Pawnee.

Tribal chairman Lawrence Goodfox quietly works his way up the windy slopes toward his ancestors.

He stops, standing over two gaping holes in Twin Mounds, a Pawnee burial ground since the 1870s, where the tribe believes at least one body has been removed.

Robbers are tearing open Indian graves across the state, scattering bones as they steal personal items such as pottery and jewelry for profit or hobby from marked and unmarked graves.

Goodfox said the tribe patrols the area more closely since the holes were discovered more than a year ago.

In an isolated Indian village cemetery near Fairfax, the remains of a 2-year-old Osage girl who died at the turn of the century have been stolen.

Scavengers dug a 50-foot-long trench along a Latimer County creek bank last September, tossing aside decaying bones of Caddo tribal members in their search for artifacts.

Battle shields, shell ornaments, clay pots — piece by piece, Oklahoma is being robbed of part of its Indian heritage.

There are 12,000 archaeological sites in Oklahoma, which has the second largest Indian population in the country. That makes the state an attractive dig to "pot hunters" or those who buy and sell what is called burial furniture, items placed with the dead.

Many tribes bury their dead with favorite possessions. The Pawnee take with them a sacred bundle, a pouch made of buffalo hide containing religious objects — items prized by looters.

"That's stealing," asserts Shawnee tribal activist Mary Mather of Sperry. "I think once we put them in the ground, that belongs to them. That's sacred."

Indian grave desecration became a felony in Oklahoma last year, but the new law has not stopped vandals.

See GRAVES, page 4A

Graves

From page 1A March 4th Tulsa Tribune

A network of collectors and dealers in virtually every state has created a lucrative market for the stolen relics.

"It's massive," said Arkansas State Archaeologist Hester Davis, who supported legislation against grave looting in her state last year only to have the bill defeated by pot hunters.

In recent years, tribal leaders in Oklahoma have become more vocal in their response to grave robbers and collectors.

Harrison Fields, executive director of the Pawnee Tribe, is in Nebraska this week supporting legislation against land owners who refuse to release unearthed Pawnee remains for reburial.

They are charging the public a fee to view the opened graves. The Pawnee tribe, which came to Oklahoma from Nebraska in the 1870s, wants the bodies reburied.

"It's a moral issue that we're concerned about," said Fields. "We want our ancestors left alone . . . Why don't they go and dig up white graves?"

The answer is simple: money.

A plain clay water bottle taken from a historic Indian grave can bring as much as $40 on the antiquities market. A finely decorated Caddo pot can be worth $25,000.

Rare pieces, such as effigy vases, carved stone figures or pots with faces molded into them, can bring any amount of money a collector will pay, said Davis. There is no ceiling price for art.

"IT'S AN OPEN market," Shawnee activist John Thomas said angrily. "They trade these relics, these burial items in the flea markets. And bones — in flea markets. Shows are advertised in major hotel chains.

"They say that there's no direct relation to any of the tribes today, so we're not hurting anybody," he said. "They don't call them graveyards or cemeteries. They call them campsites."

In Kansas and Arkansas, private collectors have charged admission to view Indian skeletons, said Brooks.

In Indiana, collectors successfully blocked felony penalties for grave looting last week.

The bill was rejected because artifact collectors wanted to dig up graves of Indians who died before 1600, about the time Indians came in contact with whites in Indiana.

"That, of course, would have left most of the Indian burial grounds uncovered by the law," said the bill's primary sponsor Rep. Dennis Avery.

THE BUYING and selling of bones is not a problem in Oklahoma according to State Archaeologist Robert Brooks, but skeletons have been destroyed, broken and discarded in the search for Indian treasures.

In the Latimer County dig, "Any skeletal remains they had simply chucked aside, trying to find something of value," said Brooks, who keeps the remains of three, perhaps four approximately 900-year-old Caddo adults in a cardboard box, awaiting reburial by the tribe. The bones were badly broken up by the looters.

More refined grave robbers employ sophisticated tools to probe and unearth the graves. "They use the same tools archaeologists use," said Brooks.

Metal detectors scan the ground for silver, copper or gold that may be buried with bodies. Long metal rods probe the graves. Some hunters go in with bulldozers.

OKLAHOMA LAW places a maximum fine of $1,000 and two years in prison on grave robbers, but the remote nature of most burial sites makes law enforcement difficult.

Sheriff's officers unsuccessfully staked out the looting site in Latimer County. "Word gets around," said Sheriff James Mickle.

"This had to be more than one individual. They were sifting it as they went along," he said. "They were professionals."

The stiffer penalties in Oklahoma reflect nationwide concerns.

Nearly a dozen states have passed similar laws within the last few years, said Walter Echo-Hawk, attorney for the Native American Rights Fund in Boulder, Colo.

"A lot of irreparable damage has already been done. But I think it is a major step that the states are acting on these loopholes," he said.

Historically, the only graves protected were those registered as cemeteries with local authorities.

UNMARKED GRAVES, including those of slaves, pioneers and soldiers slain in the Civil and Revolutionary wars, usually are unregistered. The Oklahoma law now makes punishment the same for looting any grave.

"It's sort of a weird situation — due process for dead people," said Brooks. "But it's true."

In Kentucky, legislators are expected this session to pass harsher penalties for Indian grave robbing. The move was prompted by the discovery in October of a 20-acre looting site near Uniontown where at least 1,200 graves were opened.

A state trooper stopped the digging in December after more than 400 holes pockmarked the site, now thought to be the largest Indian burial ground in North America.

The 10 men who leased the land are charged with a misdemeanor and will be tried April 22. Hundreds of Indians are expected to gather for a reburial ceremony at the site in May.

"Augers, water hoses; it was like a mining operation," said Mary Clark, president of Citizens Against Desecration, a civil group in Louisville.

Thomas is in Uniontown with Indian activist Dennis Banks to organize the reburial ceremony.

"THE SHAWNEE, the Miami, the Quapaw, Delawares, Caddoes . . . all the Indians that were back East that are now living in Oklahoma — all their ancient burial grounds here are being robbed daily of their artifacts," he said.

Mary Mather of Sperry is raising money to send a group of Oklahoma Shawnee to the reburial where most Oklahoma tribes will be represented.

It also will be the first and last time the public is invited to an Indian reburial ceremony, said Thomas. Traditionally, the ceremony is private.

Tobacco is burned at the opened Uniontown graves every few days for purification and forgiveness.

Tribes will try to convey the importance of the sacred burial ground. It is not just immoral to steal the possessions of a dead person, Thomas said, but disturbing an Indian grave affects the Indian spirit.

"WE FEEL THAT their journey has been interrupted. A lot of the offerings that were given to the gods; the pipes and things that were taken with them, the personal possessions that were buried with these people, were gifts to the mother Earth.

"Once they were disturbed and taken, then their spirit also was disturbed in the life after," said Thomas.

Indians in Uniontown said they have asked President Reagan to declare Illinois, Indiana and Kentucky an emergency area.

"The innocence of collecting arrowheads," said Thomas, "has now become a deadly game . . . we are destroying all the prehistoric sites."

Pawnee Tribe of Oklahoma

P. O. Box 470
Pawnee, Oklahoma 74058
918/762-3624

RESOLUTION 87-43
August 28, 1987

RESOLUTION

WHEREAS, The Pawnee Business Council is the supreme governing body of the Pawnee Tribe and is authorized to conduct business on behalf of the Pawnee Tribe in accordance with Article IV, Sections I and II of the Pawnee Tribal Constitution and By-Laws; and

WHEREAS, The Pawnee Business Council met in special session on August 28, 1987 at the Pawnee Tribal Administration Center Conference Room duly authorized with a quorum present; and

WHEREAS, The Pawnee Indian Tribe of Oklahoma is a federally recognized Indian tribe with an enrollment of 2,395 members, which carries out self-government activities; and

WHEREAS, The Pawnee Business Council is vitally interested in the proper care, treatment, protection and disposition of unmarked human burial sites and remains located within the State of Kansas, by virtue of its historic and prehistoric residence in and around Kansas; and

WHEREAS, The Pawnee Business Council has duly informed itself of the need for protective unmarked burial legislation in Kansas, having sent Council members to inspect the "Indian Burial Pit" located near Salina, Kansas, and to other fact-finding trips including symposia and meetings on the subject; and has participated in the efforts of the "writing committee" to explore legislative solutions; and

WHEREAS, Based upon its findings, the Pawnee Business Council strongly supports the closure of the "Indian Burial Pit" and the proper interment of the Indian persons displayed there, as well as a clear public policy giving adequate protection for unmarked human burials in order to prevent future American Indian grave desecrations and to protect all legitimate interests in the remains of Native Americans; and

WHEREAS, The Pawnee Business Council has carefully examined the provisions of the attached Bill (Kansas Unmarked Human Burial and Skeletal Remains Protection Act), and has caused a review of its provisions by legal counsel.

NOW THEREFORE BE IT RESOLVED: That the Pawnee Business Council approves and endorses the Bill (Kansas Unmarked Burial and Skeletal Remains Protection Act), and recommends and urges its introduction and passage by the Kansas Legislature.

CERTIFICATION

I, Lawrence Goodfox, Jr., President of the Pawnee Business Council; do hereby certify that a special session of the Pawnee Business Council was held on the 28th day of August, 1987, and that the Pawnee Business Council is composed of eight members, of whom 8 were present; 0 were absent, comprising a quorum, and that the foregoing resolution was duly adopted by the affirmative vote of 7 for; 0 against; and 0 abstaining, and the said resolution has not been amended or rescinded.

Signed this 28th day of August, 1987.

ATTEST:

Cecil Rouwalk, Secretary-Treasurer
Pawnee Business Council

Lawrence Goodfox, Jr., President
Pawnee Business Council

Wichita And Affiliated Tribes
P.O. Box 729
Anadarko, Ok. 73005
Tel 405/247-2425

RESOLUTION

WT 88-05

WHEREAS, The Wichita & Affiliated Tribes (Waco, Keechi and Tawakonie) have a duly established Tribal Government recognized by the Secretary of Interior, and

WHEREAS, The Executive Committee has been empowered to act in all manner of business on behalf of the Tribe, and

WHEREAS, The Wichita Executive Committee has a strong governmental interest in the proper care and treatment of Wichita burial sites that are located within its historic homeland in the State of Kansas, and

WHEREAS, Facts surrounding the "Indian Burial Pit" indicated the need for protective legislation, such as the proposed KANSAS UNMARKED HUMAN BURIAL AND SKELETAL REMAINS PROTECTION ACT, and

WHEREAS, The Wichita Executive Committee strongly supports the public policy of said ACT as being necessary to correct the existing loophole in Kansas law and to prevent future grave desecration of tribal ancestors.

NOW THEREFORE BE IT RESOLVED that the Wichita Executive Committee endorses early passage of said ACT by the Kansas Legislature.

CERTIFICATION

The foregoing Resolution was adopted at a meeting of the Wichita Executive Committee on November 5, 1987, in Anadarko, Oklahoma, by the following vote: 04 FOR, 00 AGAINST, 00 ABSTENTIONS, with a quorum being present.

ATTEST:

Gary McAdams, Acting Secretary
Wichita & Affiliated Tribes

APPROVED:

Vernon Haddon, President
Wichita & Affiliated Tribes

Resolution #87-36-T4

RESOLUTION OF THE GOVERNING BODY OF THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, The Three Affiliated Tribes, through the Tribal Business Council Cultural Concerns Committee, had been informed during 1986 by members of the various Tribes residing in the State of Kansas that possible desecration/commercial exploitation of Indian remains had been taking place; and

WHEREAS, primary concern centered around the exhibit of remains at the private site known as the "Salina Burial Pit", closing this site, and the prevention of similar, future occurrences; and

WHEREAS, the Committee participated in research in this matter because of the historical residence of the Arikara Tribe in and around the State of Kansas; and

WHEREAS, Members of the Committee and Westly Plenty Chief-Arikara Tribe traveled to inspect the site and provide input into discussion being held by the members of six Kansas Tribes, University of Kansas Officials, State of Kansas Officials, archaeologists & anthropologists, Native American Rights Fund Officials, and Haskell Indian Junior College representatives; and

WHEREAS, due to the numerous meetings scheduled and the distance/travel facts involved, the Cultural Concerns Committee designated Mr. Chester Ellis (Arikara Tribal member residing in the area) as their Official Representative who would participate in the meetings and provide reports to the Three Affiliated Tribes on the "Writing Committee's" efforts to develop corrective legislation; and

WHEREAS, Mr. Ellis has transmitted the Writing Committee's "Draft Kansas Unmarked Human Burial and Skeletal Remains Protection Act and Objectives" for review and comment prior to its submission to the Kansas State Legislature; and

WHEREAS, The Cultural Concerns Committee has reviewed the Draft Act and Objectives; and

WHEREAS, It has been noted that the Act should be effective in closing the "Salina Burial Pit" commercial operation and in preventing future desecrations through a number of key elements in its language such as:

- o Membership on the proposed "Unmarked Burial Sites Preservation Board" of four Tribal representatives of the resident Kansas Indian Tribes
- o State funding of implementation of the Act
- o Kansas Attorney General enforcement of prohibitions set forth under the Act
- o Penalties of up to $5000 for violators and a fine for commercial operators of up to 2 times the gross value gained
- o A limitation upon the time which remains may be kept by the scientific community for study
- o Consultation on the appropriate means of reinterment
- o Development and maintenance of a Registry of unmarked burial sites to aid in enforcement of the Act

THEREFORE BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes hereby approves the "Draft Kansas Unmarked Human Burial and Skeletal Remains Protection Act and Objectives" and recommends its submittal to the Kansas State Legislature for passage at the earliest possible date.

FURTHER RESOLVED, that the Tribal Business Council wishes to commend and thank Tribal Member Chester Ellis for his contribution in the development of the Draft Act and his exemplary representation of the interests of the Three Affiliated Tribes.

FURTHER RESOLVED, that the Tribal Business Council also wishes to extend its gratitude to the Members of the "Writing Committee", contributors to the Committee, State and University officials, and any supporting organizations.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 5 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 1st day of May, 1987; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated the 1st day of May, 1987.

Secretary, Tribal Business Council

ATTEST:

Edward Lone Fight

Chairman, Tribal Business Council

SAC & FOX TRIBE OF MISSOURI
Reserve, Kansas 66434 (913) 742-7471

SAC AND FOX TRIBE OF MISSOURI
TRIBAL COUNCIL

RESOLUTION NO. R-01-88

WHEREAS, The Sac and Fox Tribe of Missouri is organized in accordance with the Reorganization Act of June 19, 1934 (48 Stat. 984) and has a constitution as approved by the Secretary of the Interior on March 2, 1937, with the new tribal constitution approved by the Commissioner of Indian Affairs September 15, 1980 pursuant to the above statute, and

WHEREAS, The Sac and Fox Tribal Council has been given full authority by the Tribe to act in all matters of business for the Tribe, and

WHEREAS, The Sac and Fox Tribal Council met in session on September 4 , 1987 at Reserve, Kansas, and

WHEREAS, The Sac and Fox Tribal Council has been informed that possible desecration/commercial exploitation of Indian remains had been taking place in the State of Kansas, and

WHEREAS, Primary concern centered around the exhibit of remains at the private site known as the "Salina Burial Pit", closing this site, and the prevention of similar, future occurences, and

WHEREAS, The Sac and Fox Tribe has received and reviewed the Writing Committee's "Draft Kansas Unmarked Human Burial and Skeletal Remains Protection Act and Objectives" prior to its submission to the Kansas State Legislature, and

NOW, THEREFORE BE IT RESOLVED, That the Sac and Fox Tribe of Missouri Tribal Council hereby approves the "Draft Kansas Unmarked Human Burial and Skeletal Remains Protection Act and Objectives" and recommends its submittal to the Kansas State Legislature for passage at the earliest possible date.

CERTIFICATION

The foregoing resolution was duly adopted this 4th day of September, 1987 in a Regular Meeting of the Sac and Fox Tribal Council at which 4 members of the Council were present, constituting a quorum, by a vote of 3 for, 0 against, 0 abstaining, the Chairperson abstaining.

Nancy Keller
Nancy Keller, Chairperson
Sac and Fox Tribe of Missouri
Tribal Council

ATTEST:

Neal Bahr
Neal Bahr, Secretary

Resolution 87-R-29

IOWA TRIBE OF KANSAS AND NEBRASKA
EXECUTIVE COMMITTEE
SEPTEMBER 16, 1987

WHEREAS, The Iowa Tribe Executive Committee being duly organized met in Regular Session this 16th day of September, 1987, and

WHEREAS, The Iowa Executive Committee has authority to act for the Iowa Tribe under the present constitutional authority as provided in Sec. 2, Article IV - Governing Bodies, and

WHEREAS, The Iowa Tribe of Kansas & Nebraska being organized and empowered by their Constitution and Bylaws (approved November 6, 1978), and

WHEREAS, The Constitution and Bylaws of the Iowa Tribe of Kansas & Nebraska authorizes and empowers the Executive Committee to engage in activities on behalf of and in the interest of the welfare and benefits of the Iowa Tribe of Kansas and Nebraska and the enrolled members thereof, and

WHEREAS, The Executive Committee has been informed during 1986 by members of various Tribes and news media that desecration/commercial exploitation of Indian remains has been taking place, and

WHEREAS, A primary concern has been centered around the exhibit of human remains ath the private site known as the "Salina Burial Pit", closing this site, and the prevention of similar, future occurances, and

WHEREAS, Mr. Chester Ellis has transmitted the writing committees "Draft Kansas Unmarked Human Burial and Skeletal Remains Protection Act and Objectives" for review and comment prior to its submission to the Kansas State Legislature, and

WHEREAS, It has been noted that the Act should be effective in closing the "Salina Burial Pit" commercial operation and in preventing future desecrations through a number of key elements in its language such as:

- Membership on the proposed "Unmarked Burial Sites Preservation Board" of four Tribal representatives of the resident Kansas Indian Tribes
- State funding of implementation of the Act
- Kansas Attorney General enforcement of prohibitions set forth under the Act
- Penalties of up to $5000 for violators and a fine for commercial operators of up to 2 times the gross value gained
- A limitation upon the time which remains may be kept by the scientific community for study
- Consultation on the appropriate means of reinterment
- Development and maintenance of a Registry of unmarked burial sites to aid in enforcement of the Act

NOW THEREFORE BE IT RESOLVED, that the Executive Committee of the Iowa Tribe of Kansas & Nebraska hereby approves the "Draft Kansas Unmarked Human Burial and Skeletal Remains Protection Act and Objectives" and recommends its submittal to the Kansas State Legislature for passage at the earliest possible date, and

FURTHER BE IT RESOLVED, that the Executive Committee of the Iowa Tribe of Kansas & Nebraska wishes to commend and thank Chester Ellis for his contribution in the development of the Draft Act, and

FURTHER BE IT RESOLVED, that the Executive Committee of the Iowa Tribe of Kansas & Nebraska also wishes to extend its gratitude to the Members of the "Writing Committee", contributors to the Committee, State and University officials, and any supporting organizations.

CERTIFICATION

The foregoing Resolution was duly adopted this date, September 16, 1987 in a Regular Session of the Executive Committee at which 5 members of the Committee were present, constituting a quorum by a vote of 4 for, 0 against. Chairman abstaining.

Leon Campbell
Leon Campbell, Chairman
Iowa Executive Committee

ATTEST

Aquila Tilton
Aquila Tilton, Secretary
Iowa Executive Committee

PBP 87-36

PRAIRIE BAND OF POTAWATOMI INDIANS

TRIBAL COUNCIL

RESOLUTION

WHEREAS, The Prairie Band of Potawatomi Indians is duly organized Tribe and has a Constitution and By-Laws as approved by the Secretary of the Interior on February 19, 1976, and amended on August 28, 1985, and

WHEREAS, The Prairie Band Potawatomi Tribal Council met in a special session on the Potawatomi Reservation, Mayetta, Kansas, August 26, 1987, and

WHEREAS, The Prairie Band Potawatomi Tribal Council primary concern centered around the exhibit of remains at the private site known as the "Salina Burial Pit", closing this site, and the prevention of similar, future occurrences; and

WHEREAS, Members of the committee traveled to inspect the site and provide input into discussions being held by the members of the Kansas Tribes, University of Kansas Officials, State of Kansas Officials, Archaeologists and Anthropologists, Native American Rights Fund Officials, and Haskell Indian Junior College representatives; and

WHEREAS, Due to the numberous meetings scheduled and the distance/ travel facts involved, the Cultural Concerns Committee designated Mr. Chester Ellis as their official representative who would participate in the meetings and provide reports to the Three Affiliated Tribes on the "Writing Committee's" efforts to develop corrective legislation; and

WHEREAS, Mr. Ellis has transmitted the Writing Committee's Draft Kansas Unmarked Human Burial and Sketetal Remains Protection Act and Objectives" for review and comment prior to its submission to the Kansas State Legislature; and

WHEREAS, The Cultural Concerns Committee has reviewed the Draft Act and Objectives; and

WHEREAS, It has been noted that the Act should be effective in closing the "Salina Burial Pit" commercial operation and in preventing future desecrations through a number of key elements, and

THEREFORE BE IT RESOLVED, that the Prairie Band Potawatomi Tribal Council hereby approves the "Draft Kansas Unmarked Human Burial and Skeletal Remains Protection Act and Objectives" and recommends its submittal to the Kansas State Legislature for passage at the earliest possible date.

FURTHER RESOLVED, The the Tribal Council also wishes to extend its gratitude to the Members of the "Writing Committee". contributors to the Committee, State and university officials, and any supporting organizations.

CERTIFICATION

The foregoing Resolution was duly adopted this date, August 26, 1987, in a special session of the Tribal Council, at which ____members of the Tribal Council were present, constituting a quorum, by a vote of __ for __ agaisnt, the Chairperson abstaining.

George L. Wahquahboshkuk
GEORGE L. WAHQUAHBOSHKUK, Chairman
Prairie Band Potawatomi Tribal Council

ATTEST:

Grace Pahmahmie Whawassuck
GRACE PAHMAHMIE WHAWASSUCK, Secretary
Prairie Band Potawatomi Tribal Council

Alberta Wamego
NOTARY PUBLIC
State of Kansas
[illegible]

SUBSCRIBED AND SWORN TO BEFORE ME THIS 26th DAY OF AUGUST, 1987.

Alberta Wamego

4-1-91

POLICY (6/30/88)

REGARDING REINTERMENT OF HUMAN SKELETAL REMAINS AND ASSOCIATED GRAVE GOODS PRESENTLY HELD IN COLLECTIONS OF STATE HISTORICAL SOCIETY OF NORTH DAKOTA

Background

By motion adopted at the August 1, 1986, meeting of the State Historical Board, it was determined to move toward a policy of reinterment of Indian skeletal remains and associated grave goods in the collections of the State Historical Society of North Dakota. By further motion adopted at the same August 1, 1986, meeting, a five-member Reinterment Committee was appointed, whose responsibilities were (a) to hold a series of hearings to gather public comment on the issue of reinterment, with the resultant testimony, both oral and written, to be used by the Board in developing an agency policy regarding reinterment, and (b) to make recommendations to the Board for the development and adoption of agency policy. The religious and legal rights of the Indian people of the state have been presented to and considered by the Board, along with the traditional beliefs and opinions of the Indian people of the State. Additionally, the issues of scientific interest and historical value have been presented to and considered by the Board.

It must be noted that it is the State Historical Board's exclusive responsibility to amend or repeal any existing incongruous administrative rules to conform with the following policy, as expressly authorized by North Dakota Century Code section 28-32-02. Weighing all of these considerations, the following policy is hereby adopted.

National Museum of Natural History · Smithsonian Institution
WASHINGTON, D.C. 20560 · TEL. 202-

January 29, 1988

Senator Dennis Baack
Chairman Government and Military Affairs Committee
Room 1122
State Capitol
Lincoln, Nebraska 68509

Dear Senator Baack:

This letter is in reference to pending Nebraska state legislation concerning human skeletal remains from archaeological sites. I am writing to express my concern regarding this legislation and to emphasize the importance of the Nebraska State Historical Society human skeletal collection as an irreplaceable source of scientific, biomedical and historical information. Scientists learn a great deal by studying living and past populations, the latter being completely dependent on the preservation of well documented human remains in museum collections. Through research based on human skeletal remains, scientists have contributed an enormous and diverse array of information about human behavior, the epidemiological history of many human diseases, and biological similarity and diversity. The specific research problems that can be examined with human bones include subsistence patterns, spatial and temporal variation in cranial and postcranial morphology, genetics, regional and temporal patterning in skeletal pathology, and mortuary practices.

For several years, I have been involved with the examination and analysis of data collected from human skeletons from the Northern and Central Plains. My primary research interests lie in this region. I have also excavated and studied human remains recovered from seven historic cemeteries in the Southern United States. It seems important to note that reburial has not been the course of action in these cemeteries involving both whites and blacks, but rather curation for present and future scientific study.

I hope that any legislation concerning human skeletal collections of archaeological contexts also gives consideration to their importance to biomedical and archaeological research. Please feel free to contact me if additional information would be helpful.

Sincerely yours,

Douglas Owsley
Douglas W. Owsley Ph.D.
Associate Curator

Policy Statement

From a consideration of the public testimony submitted and of additional statements made by Indian and non-Indian citizens alike, it is apparent that these ancient human beings were buried with the intent of eternal rest. Nor may we presume that, before their death, they had consented to becoming legally owned by any other individual, institution, or government. We must declare that human rights do not cease with death. The State Historical Board, in carrying out its responsibilities to all citizens of North Dakota, as mandated by its mission statement, must be faithful in protecting a fundamental human right - the right to rest in peace.

Deaccessioning of Human Remains

The State Historical Society of North Dakota shall discontinue its present practice of curation of human remains and associated grave goods with the ultimate goal of reinterment of those items under its control. To the degree that the state may be deemed under law to be "owner" of skeletal remains, the state disclaims such ownership and accepts only custodial responsibility for purposes of reinterment.

Deaccessioning shall be accomplished in the following manner:

1. Human skeletal remains and associated grave goods shall hereby be recognized as a distinct collection category. In compliance with the spirit of existing state and federal laws which generally prohibit removal, sale, and exchange of said remains and grave goods, such human skeletal remains and associated grave goods currently in the North Dakota State Historical Society's collections shall be exempt from the deaccessioning/disposition requirements provided in Section VII of the Artifact Collections Policies of the State Historical Society of North Dakota Museum Division.

2. All human skeletal remains and associated grave goods which are on loan or have been donated to the State Historical Society, or are being held thereby under any other type of agreement with other parties, shall be registered in the above-referenced special collection category. The State Historical Society shall endeavor to secure the written consent to release for reinterment of all human skeletal remains and associated grave goods from all donors and from all other parties to any type of agreement. Upon receipt of such written consent, the State Historical Society shall so notify the appropriate tribal entity, as identified in paragraphs 3 and 4 below, which entity will then physically secure the human skeletal remains and associated grave goods for reinterment on Indian lands. Upon having determined, in each instance, that it will be unable to obtain such written consent, the State Historical Society shall immediately notify the Intertribal Reinterment Committee of such failure and upon request provide said

Committee with information relative to the basis for its inability to secure such consent, which information shall include the name and address of any donor who has refused consent. In each instance wherein a particular donor cannot be located, the State Historical Society shall publish its intent to release the donated human skeletal remains and/or associated grave goods to the appropriate tribal entity for reinterment on Indian lands.

3. All human skeletal remains and associated grave goods in the possession of the State Historical Society which have, to date, been tribally identified, shall be certified as to specific tribal affiliation. The Superintendent shall immediately notify the appropriate tribal governments of the authorization to release for reinterment and restrict access to all such human skeletal remains and associated graze goods by any person, until such time as they have been physically secured by the duly designated representatives of the respective tribal governments for reinterment on Indian lands.

4. All human skeletal remains and associated grave goods, not referenced in paragraph 2 above, in the possession of the State Historical Society which have not, to date, been tribally identified, shall be immediately restricted, as prescribed in paragraph 3 above. The Superintendent shall immediately notify the Intertribal Reinterment Committee of the authorization to release for reinterment and additionally specify the volume of such human skeletal remains and associated grave goods to be physically secured by the duly designated representatives of said Committee for reinterment on Indian lands, as designated by the Intertribal Reinterment Committee.

Analysis

In conjunction with the intent of paragraphs 3 and 4 above, there shall be no further analysis conducted, to any extent or in any manner, on the human skeletal remains and associated grave goods now in the possession of the State Historical Society. In addition, the Superintendent shall take the actions necessary to ensure that all of the human skeletal remains and associated grave goods are immediately secured and restricted from access by any person.

Disinterment

No human skeletal remains or associated grave goods released and reinterred in accordance with this policy shall be subsequently disinterred by the State Historical Society.

Coordination

The Indian Affairs Commission shall be informed of all actions of the Society in carrying out these policies. The Society shall request the assistance, the advice, and the presence of the Indian Affairs Commission in working with the Tribal Councils and the Intertribal Reinterment Committee.

Definitions

For the purpose of this policy exclusively, the following terms shall have the following definitions:

LEGAL OWNER - For the purposes of this policy, the general concept of "legal owner" and/or ownership of human skeletal remains and associated grave goods is not recognized. However, the State Historical Board is compelled to acknowledge the federal legal rule that any human skeletal remains and associated grave goods that are part of a federal collection are subject to the jurisdiction and ultimate custodial authority of the United States Government. "Federal collection" shall include collections curated pursuant to contracts with the federal government or remains from federal land or otherwise belonging to the federal government.

GRAVE GOODS - shall mean that all sacred objects, which shall generally include all items known to have been interred with human skeletal remains, including, but not limited to, projectile points, knives, scrapers, articles of clothing, ornaments, beads, and religious items such as pipes, stones, dishes and pottery, feathers, and any item so identified by consultation with tribes.

DULY DESIGNATED REPRESENTATIVE - shall mean any person who is so appointed and can provide written documentation of such appointment by his/her respective tribal governing body.

ANALYSIS - shall mean any activity that requires Indian human skeletal remains and associated grave goods to be touched by any person other than the appropriate Indian spiritual leaders so appointed by their respective tribal governing.

IDENTIFICATION - shall be included within the meaning of the term "analysis."

United States Department of the Interior
NATIONAL PARK SERVICE
MIDWEST ARCHEOLOGICAL CENTER
FEDERAL BUILDING, ROOM 474
100 CENTENNIAL MALL NORTH
LINCOLN, NEBRASKA 68508-3873

IN REPLY REFER TO:
June 28, 1988

H20(MWAC)

AIR EXPRESS

State Historical Society
RECEIVED
JUN 29 1988
N.D. HERITAGE CENTER
Bismarck, North Dakota

Dr. Larry Loendorf
Department of Anthropology
University of North Dakota
Box 8254, University Station
Grand Forks, North Dakota 58202

Dear Dr. Loendorf:

We are writing to you in your capacity as President of the Board of Directors of the State Historical Society of North Dakota to express our concern over actions that we understand the Board is considering with regard to the dispersal of certain portions of the archeological collection currently housed at the Society.

The dispersal or separation of any portion of an archeological collection destroys the integrity of that collection for future research purposes. An archeological collection from any given site consists of a set of data that includes all artifacts, faunal remains, burials, and other specimens or objects, as well as all of the associated notes, maps, photographs, and other records that have resulted from scientific investigation of that site. Often, these data are all that remain of the site in question, and the potential to answer future questions about the people who once occupied that site lies solely in the archeological data that have already been acquired. Thus, archeological collections should be maintained intact as a resource for future study. Collections should not be broken up, or destroyed, or otherwise rendered inaccessible for study.

Should the Society choose to return to the National Park Service human remains and associated burial inclusions that were gathered under the auspices of the federal Interagency Archeological Salvage Program--which constitute only portions of the archeological collections with which they are associated--then the National Park Service will demand the surrender of the totality of all such collections held by the Society. Those collections will then be placed in another repository where their integrity can be assured in perpetuity.

Sincerely,

Robert K Nickel
Acting Chief

cc:
James Sperry, State Historical Society of North Dakota

Introduced: 2/15/88
Referred: State Affairs

5-1912A

IN THE HOUSE

BY WALLIS

HOUSE JOINT RESOLUTION NO. 58
IN THE LEGISLATURE OF THE STATE OF ALASKA
FIFTEENTH LEGISLATURE - SECOND SESSION

Relating to the return of human remains from the Smithsonian Institution.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the legislature recognizes the equality of all human beings on this earth and their right to be treated with dignity and respect; and

WHEREAS this respect is extended to human remains after death; and

WHEREAS in the last century the Smithsonian Institution collected human remains throughout Alaska, particularly in Native villages along the interior rivers and Northwest Coast; and

WHEREAS the display and storage of these human remains in the Smithsonian Institution is inappropriate and manifests lack of respect for the remains; and

WHEREAS the return of these human remains to relatives or to the sites of origin would be an appropriate act of restitution;

BE IT RESOLVED that the Alaska State Legislature strongly requests the Smithsonian Institution to return human remains taken from Alaska in a respectful and timely manner.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; Mrs. Reagan, First Lady of the United States; the Honorable Robert McCormick Adams, Secretary of the Smithsonian Institution; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

(ATTACHMENT 8)

LARSEN BAY TRIBAL COUNCIL

RESOLUTION NO. 87-09

WHEREAS, the Larsen Bay Tribal Council represents the Native indigenous people of Larsen Bay and Uyak Bay, Kodiak Island, Alaska, who have inhabited these places continuously for thousands or years; and

WHEREAS, we honor and respect our ancestors and their traditional ways, which enrich our personal and spiritual lives today as they will strengthen the lives of our children and our children's children in years to come; and

WHEREAS, several decades ago archaeologists excavated and removed the bodily remains of hundreds of our Native ancestors who had been buried here, the burial artifacts that were found with their remains, and many thousands of other cultural and spiritual items as well; and

WHEREAS, the work of Ales Hrdlicka and others is documented in several books and publications which all attest to the massive removal of our ancestors' remains and artifacts; and

WHEREAS, years after the archaeological research was finished, the remains of our ancestors and associated burial items excavated with them are on record as stored in the Smithsonian Institution; and

WHEREAS, the skeletal remains, burial objects, and artifacts held by the Smithsonian Institution belong to us, the Native people of Larsen Bay and Uyak Bay, who have the traditional right and spiritual responsibility to re-inter our ancestors' remains; and

WHEREAS, recent court decisions elsewhere in the United States have upheld the rights of Native people to their ancestors' remains, burial objects, and other artifacts;

NOW THEREFORE BE IT RESOLVED that the Tribal COuncil of Larsen Bay seeks redress to a wrong that was committed years ago when ancient village sites were plundered in the name of archaeology, and we now demand the immediate return of the items held by the Smithsonian Institution; and

LARSEN BAY TRIBAL COUNCIL
RESOLUTION NO. 87-09
Page 2

LET IT BE FURTHER RESOLVED that a copy of this Resolution be transmitted to Senators Murkowski and Stevens, the members of the Senate Select Committee on Indian Affairs, Congressman Young, the members of the House Committee on Indian and Insular Affairs, Governor Cowper, State Senator Zharoff, and Representative Davidson.

Enacted on the 29 day of May, 1987.

Signed: ______________________
Tribal Council President

Attest: Richard

Oglala Sioux Tribe

Phone (605) 867-5821
Box H
Pine Ridge, South Dakota 57770

PAUL IRON CLOUD
President

June 15, 1988

Robert McCormick Adams
Secretary
The Smithsonian Institution
Washington, D.C. 20560

RE: Return of Oglala Sioux Remains

Dear Secretary Adams:

As President of the Oglala Sioux Tribe, I am requesting that the Smithsonian Institution immediately return to our Tribe the skeletal and mummified remains of the Oglala Sioux in the possesion of the Smithsonian Institution.

We have the computer printouts for the Indian remains held by the Smithsonian which were taken from the states of South Dakota and Nebraska. If there are Oglala Sioux which were taken from other states we would want those returned to us also.

In many instances, the skeletal remains listed on the printouts are identified as "Sioux" or "Indian". Because there is a notation of the general location from where the remains were taken, we believe a number of these may be Oglala. In some instances, as you know, the computer printout identifies the remains as Oglala.

We understand that the Smithsonian has been researching for about a year the skeletal remains and accession records of people for whom you actually have names. We have a copy of an Army Medical Museum record (enclosed) which notes that you have the skull of Shota (Smoke), an Oglala Chief. The record says that he was 58-60 years old at the time of his death in 1863 and that he belonged to the Bad Faces. We have not been contacted by the Smithsonian about this matter, and understand that you were to have contacted Tribal governments about skeletal remains for which you have names. We would like a status report on this matter.

(ATTACHMENT 10)

We would also like information regarding the financial assistance the Smithsonian can provide for a tribal member to do research at the Smithsonian regarding the skeletal and mummified remains of our people in the possession of the Smithsonian Institution.

We are represented in Washington, D.C. by the law firm of Hobbs, Straus, Dean & Wilder and they are authorized to communicate with the Smithsonian on matters related to our request for return of Oglala skeletal and mummified remains.

I look forward to your prompt response.

Sincerely,

Paul Iron Cloud
President

cc: Severt Young Bear

Enclosure

THREE AFFILIATED TRIBES • FORT BERTHOLD RESERVATION

Mandan, Hidatsa and Arikara Tribes

LEGAL DEPARTMENT

Tribal Administration Buildings
New Town, North Dakota 58763
(701) 627-3621

August 17, 1988

The Honorable John Melcher
SH-730 Hart Senate Office Building
Second & C Street N.E.
Washington, D.C. 20510-2601

Re: Submission of Comments on Substitute Amendment (No. 2124) for S.187, the "Native American Museum Claims Commission Act"

Dear Senator Melcher:

On behalf of the Intertribal Reinterment Committee which formally represents the respective interests of the four (4) Indian Tribes of North Dakota, I hereby submit certain comments for the record of the hearing on the Substitute Amendment (No. 2124) for S.187, held on July 29, 1988, before the Senate Select Committee on Indian Affairs.

I am employed as an attorney with the Legal Department of the Three Affiliated Tribes and am additionally serving in the capacity of legal counsel for the Intertribal Reinterment Committee. Said Committee formally represents the respective interests of the North Dakota Indian Tribes in various matters involving the repatriation of ancestral skeletal remains and associated grave goods. The four (4) Tribes represented by the Committee are the Devils Lake Sioux Tribe, the Turtle Mountain Band of Chippewas, the Standing Rock Sioux Tribe, and the Three Affiliated Tribes (Mandan, Hidatsa, and

Arikara). The Intertribal Reinterment Committee has been most recently involved in successful negotiations with the North Dakota State Historical Board relative to the release and return for reinterment of the skeletal remains and associated grave goods of approximately 200 ancestors of the North Dakota Tribes.

In view of the fact that our comments are being submitted in the eleventh hour, I will attempt to be as brief and succinct as possible, so as not burden you with an extensive commentary.

The Intertribal Reinterment Committee fully supports and applauds the basic concept and intent of the Substitute Amendment (No. 2124) for S.187, with the express qualification that our comments proposing certain changes in various substantive provisions of the legislation be granted consideration within the temporal constraints currently existent. In an effort to eliminate the necessity of setting forth in this letter a lengthy dissertation relative to the absolute need for this legislation and enumeration of our specific comments, I represent to you that the Intertribal Reinterment Committee generally endorses and incorporates herein by reference (with the modification and supplementation set forth hereinbelow) the comments on the legislation previously submitted by the Native American Rights Fund. The comments so endorsed and incorporated were set forth by the Native American Rights Fund in (1) the February 19, 1987 letter directed to the Honorable John Melcher by Steven C. Moore, wherein were set forth preliminary comments on S. 187 itself, and (2) *the July 29, 1988 testimony of Walter R. Echo-Hawk before the Senate Select Committee on Indian Affairs on a substitute bill (Amendment No. 2124) for S.187, photostatic copies of which two (2) submissions are attached hereto for reference.*

(I inform you, Senator Melcher, that I have conferred with Mr. Echo-Hawk of NARF relative to the general endorsement by the Intertribal Reinterment Committee of the above-referenced comments previously submitted by NARF. I would further draw your attention to page 17 of Mr. Echo-Hawk's July 29, 1988 testimony, wherein he made specific reference to the recent success with which our Committee met in negotiating the release of the Indian skeletal remains and associated grave goods in the possession of the North Dakota State Historical Society and the attempt by the National Park Service to frustrate the success of such good faith negotiations.)

The specific comments on Substitute Amendment (No. 2124) for S.187 hereby submitted by the Intertribal Reinterment Committee, which modify and supplement the comments previously submitted by the Native American Rights Fund, are set forth, by section, as follows:

Section 4 - Native American Claims Commission

We agree with Mr. Echo-Hawk that, "(i)f this Bill purports to be enacted for the benefit of Natives or is deemed necessary to remedy prior violations of Native constitutional rights or rights to sepulture," Native people should have a greater percentage of actual participation on the Commission than that for which the Bill currently provides. We would propose that a majority of the members of the Commission be Native Americans and that the total membership of the Commission be increased from three (3) to seven (7) or more members. The proposed majority Native participation on the Commission would more adequately comport with the purported intent of the Bill and potentially avoid the "stacked deck" on the Commission envisioned by Mr. Echo-Hawk on page 24 of his July 29, 1988 testimony. Additionally, the proposed increase in total Commission membership, with the concomitant increase in individual Native American participation thereon, would result in a greater likelihood that the Native American constitution of the Commission would actually reflect the general view within the Native population of the United States relative to the matter of repatriation. In conjunction with the rationale supportive of our latter proposal to increase the total Commission membership, we would finally propose that the Native Americans appointed to the Commission be actual residents of Indian Country, which physical proximity to their fellow Native Americans will have provided to such Commission members a realistic and direct understanding of the general view of the Native population relative to the matter of repartriation.

Section 16

We would propose that Section 16 be amended by adding at the end of subsection (b) the clause "and that such Indian tribe or Native Hawaiian group has consented in writing to the specified provision for *any such historic preservation efforts." The apparent intent of Subsection 16(b) is to provide for the weighing of the interest in such historic preservation efforts against any countervailing religious and cultural values of the respective Indian tribe or Native Hawaiian group. As we read the bare language of Subsection 16(b), it is not clear that, in the event that such mitigation measures (i.e., historic preservation efforts) are, in fact, incompatible with the religious and cultural values of the respective Native group, the Commission shall not order that such historic preservation efforts be undertaken. We propose that this should be the intent and practical operation of this Subsection and that no historic preservation efforts should be ordered by the Commission in those instances wherein such efforts would be deemed contrary to the values of the respective Native group. Thus, for the purpose of clarifying such intent and practical operation of Subsection 16(b), we propose the above-specified amendment thereto, wherein the written consent of the respective Native group would be absolutely required as a condition precedent to the issuance by the Commission of an order providing for any historic preservation efforts deemed compatible with the religious and cultural values of the Indian tribe or Native Hawaiian group.*

Upon the basis of the knowledge and practical experience of the Intertribal Reinterment Committee, it is our contention that some, if not most, Native American tribes and groups are adamantly opposed to the undertaking of any historic preservation efforts, such as scientific analysis or study, in relation to the skeletal remains and *associated grave goods of their ancestors. A case in point are the four (4) North Dakota Indian Tribes represented by our Committee. Throughout the course of our protracted negotiations with the North Dakota State Historical Board, we vehemently opposed the conduct of any further scientific analysis or study of the remains and artifacts in possession of the Historical Society prior to their release by the Board for reinterment. We ultimately succeeded on the issue of analysis, as is evidenced by the June 30, 1988 policy finally adopted by the State Historical Board (a photostatic copy of which policy is attached hereto for reference). The Section of the policy entitled "Analysis" (p.5) provides that "there shall be no further analysis conducted, to any extent or in any manner, on the human skeletal remains and associated grave goods now in the possession of the State Historical Society." In the Section of the policy entitled "Definitions" (pp.6&7) the term "analysis" is defined as "any activity that requires Indian human skeletal remains and associated grave goods to be touched by any person other than the appropriate Indian spiritual leaders so appointed by their respective tribal governing (body)." (emphasis added).*

On behalf of the Intertribal Reinterment Committee and the Indian Tribes of North Dakota, I thank you, Senator Melcher, for the opportunity to submit comments for the record of the hearing on the Substitute Amendment (No. 2124) for S. 187. I would also express our unqualified gratitude for your continued and unwaivering interest in and concern about the significant issue of the repatriation of Native American skeletal remains, ceremonial artifacts, and grave goods.

Respectfully submitted,

Christopher D Quale

Christopher D. Quale
Special Counsel
Intertribal Reinterment Committee

CDQ:dd

American
Association
of
Museums

Supplemental Statement

of

The American Association of Museums

on

The Substitute Amendment to S. 187
The Native American Museum Claims Commission Act

to

The Select Committee on Indian Affairs
United States Senate

August 30, 1988

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Mr Chairman, the American Association of Museum is pleased to submit this statement for the public record to supplement our testimony of July 29, 1988 to the Senate Select Committee on Indian Affairs on the substitute amendment to S. 187, the "Native American Museum Claims Commission Act."

We wish to express our gratitude to the committee for providing the AAM with the opportunity to present testimony at the July 29 hearing. We continue to offer our cooperation and assistance to the committee, as we have throughout the committee's deliberations on this legislation in the past two years, in order to achieve a mutually agreeable and sensible resolution to the concerns of this committee, of the Native American community and of America's museums regarding the repatriation of Native American ceremonial artifacts and skeletal remains held in museums. Because we were asked to provide the committee with additional information at the hearing, we wish to submit the following comments for the committee's consideration.

The American Association of Museums was asked by the Select Committee chairman to make an effort to provide the committee with information regarding the number of holdings by museums of Native American skeletal remains. The fact that such a request was made suggests the lack of adequate information upon which to base the need for a legislative solution. Soon after the hearing, the AAM developed and undertook a survey of its entire museum membership, 2300 museums, nationwide. We have asked each museum to provide us with information about the size and nature of their collections of Native American skeletal remains and ceremonial artifacts. Although we estimate that the great majority of AAM's member museums do not hold such collections, for those that do, we will be pleased to provide the Congress with the most accurate information that we can acquire about the size of such holdings. We will submit a report to the committee when the survey is completed.

As stated in our July 29 testimony, the AAM's sensitivity to the treatment and restitution of Native American ceremonial artifacts and skeletal remains is not newly founded. Although we acknowledge that the introduction of S. 187 in January of 1987 reinforced museums' efforts to carry out their special responsibilities as public trust managers of Native American collections, the development of the association's Repatriation Policy, submitted earlier for the record, is the most recent example within the museum community to address the important issue of the treatment of Native American skeletal remains and sacred artifacts in museum collections.

We noted in our testimony two earlier examples of the museum community's serious approach and consideration of this issue. These bear repeating. In AAM's 1981 Museum Trusteeship, the definitive handbook for museum trustees, a subchapter titled, "Accountability: To Groups Claiming Cultural Patrimony," presented the special responsibility of museum trustees to be responsive and sensitive to claims made by Native Americans. Ten years ago, in AAM's Museum Ethics (1978), the code of ethics of the entire museum profession, Native American human remains and sacred objects were the only collections treated with specific guidelines for proper management, research, conservation, and accessibility.

We can look back even further. On June 7, 1973, over sixteen years ago, the membership of the AAM approved a resolution and policy statement on human remains. The full text of the resolution reads:

> In recognition of the current concern over the use of human skeletal material in museums, the American Association of Museums has formulated a general policy statement covering certain basic issues for consideration by those museum trustees and staff members who seek guidance in a complex and unresolved problem.
>
> In the search for knowledge, we seek answers to the Universe, our world, all living things, and in ourselves. As educational institutions, museums are vigorously searching for understanding - most particularly

> about ourselves as human beings. Much of what we have learned about human development and prehistoric cultures has been derived from burials. There is merit in continuing such investigations but if we are to achieve wisdom, yet adhere to an honorable position as humanists who are concerned with the quality of life and the worth of the individual, the study of skeletal material must be undertaken with dignity, and with regard for the feelings of the most sensitive among us. Research must be accomplished in a manner acceptable not only to fellow professionals, but also to those of varying religious beliefs.
>
> In particular, Native Americans feel a kinship to ancestral peoples and museums must seek means of achieving scholarship and interpretive goals acceptable to the actual and spiritual descendents of the peoples under study or run the risk of alienating the segment of our population most closely related to the subject of those studies.
>
> BE IT THEREFORE RESOLVED THAT: Although there is sometimes a need to use skeletal material in interpretive exhibits, this must be done with sensitivity and understanding of the feelings for human dignity held by all peoples. It is presumptuous to interpret people unless we respect their rights and intrinsic dignity. The objective of an interpretive exhibit is to help the visitor understand, indeed, to identify with, those who lived or live under different circumstances. The curiosity of the visitor is no justification for the violation of beliefs concerning the dead.
>
> AND BE IT FURTHER RESOLVED THAT: It is the position of the American Association of Museums that the human being of whatever century and of whatever place is entitled to the same concern that would be accorded a member of one's own family, thereby confirming our belief that we are all indeed of one family.

When this resolution was adopted, the museum community worked to ensure that all museums adhere to the tenets of this policy, and that the boards of individual museums declare firm policies of their own concerning the exhibit of human burial remains and other objects of a sensitive spiritual or religious nature in accordance with this statement. The museum community's commitment to treat collections of Native American materials with extreme care and in accordance with Native American beliefs and traditions has been moved further along by the AAM's 1988 policy providing museums with guidance for the repatriation of ceremonial objects and skeletal remains, and by efforts currently underway within the AAM to review and revise the code of ethics for the museum community. This is a commitment that museum staff and trustees make each day to their institutions, the caretakers of America's cultural heritage.

We believe that the July 29 hearing emphasized the lack of a need for the establishment of a federal claims commission. Although we concur with Senator John Melcher, sponsor of the substitute amendment, that problems may exist, we believe these problems are few and that the ultimate means of successful negotiation for the repatriation of Native American skeletal remains and ceremonial artifacts is on the local level between the two parties involved. We continue to believe that this legislation would indeed alienate the two communities, placing the relationship between museums and Native Americans in an adversarial context. Therefore, we continue to strongly oppose the approach the legislation suggests.

At the hearing, only two cases were cited in which tribal governments claimed that museums were unwilling to negotiate or cooperate in good faith for the repatriation of Native American materials. In our testimony, we stated that the relationship between museums and Native Americans is one of increasing cooperation, citing six such examples. We must ask, do two cases of poor cooperation justify the need for a federal claims commission? Although there may be others, the crucial question at this juncture is not whether to establish a claims commission. Instead, the issue must be to define the problem. To what extent do museums hold Native American skeletal remains and ceremonial artifacts? In what ways are members of Native American groups affected because ceremonial objects or Native American human remains are housed in museum collections? How have museums and tribal groups reached mutually acceptable agreements on the appropriate care of these materials? What scientific purposes are served by the holding of these materials in museums, universities, and other institutions?

These questions have not been fully explored or answered. Hence, we continue to believe that we must collectively seek an alternative approach to this legislation. At the hearing, Michael J. Fox, director of the Heard

Museum in Phoenix, testifying on behalf of the AAM, proposed an immediate year-long dialogue on the identification, use, care, and ownership of Native American materials. Such a federally promoted program, he stated, would capture the momentum, enthusiasm, conviction and commitment of all parties involved to the issue of the repatriation of Native American ceremonial artifacts and skeletal remains. Mr. Fox and the AAM are deeply committed to this proposed alternative. We believe that such a dialogue, involving representatives of the Native American community, of the sciences of anthropology, archaeology, and ethnology, of the museum community, of the legal profession and the congressional leadership, would create a dramatic and thorough forum for a fuller understanding of the scope of this issue, of the Native American community's concern with the actions of museums, and of the museum community's response to its mission of collecting, preserving and exhibiting collections of Native American origin.

We believe that an impartial and dedicated research institution, such as the renowned School of American Research in Sante Fe, New Mexico, would be an ideal atmosphere for research and discussion that will ultimately answer many of these questions. Mr. Fox has personally contacted the School of American Research and they have offered their facilities and resources to make possible such a forum.

We urge the committee once again to consider our proposal to further define the scope of this problem with the cooperation of the Native American and museum communities before a legislative approach, such as the substitute amendment to S. 187, is enacted. We thank the committee again for your responsiveness to our concerns and stand ready to be of continued assistance on this matter.

Attorneys
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19 February 1987

Honorable John Melcher
SH-730 Hart Senate Office Bldg.
Washington, D.C. 20510

Re: Native American Cultural Preservation Act: S. 187

Dear Senator Melcher:

On behalf of the Tunica Biloxi Tribe of Louisiana and numerous other tribal and Alaskan village clients the Native American Rights Fund hereby submits for the record the following comments on S. 187, the "Native American Cultural Preservation Act" of 1987. As we indicated in our 18 December 1986 letter to you on this subject, we appreciate your interest in the federal curation of Indian skeletal remains and associated grave goods, and your commitment to the expeditious return of these remains to Indian people for appropriate disposition consistent with traditional beliefs. The disparate treatment of these materials by the United States is one of the major festering sores in the federal government's legacy of cultural and religious persecution of Indian people. The time has come literally to get these skeletons out of the closet and return them to their intended resting places.

We have several comments of both a general and specific nature which we would like to offer for your consideration at this time. First, while we applaud the underlying purposes of the legislation, and its effort to work an equitable compromise between diverse, competing views, we believe the legislation ignores a fundamental legal precept which cannot be overlooked. More precisely, we firmly believe that where cultural affinity can be demonstrated, a tribe or tribal group has property rights in human remains and associated grave goods superior in the law to the asserted property rights of either the federal government or public or private institutions which house collections removed from public or private land. Unfortunately, the legislation as written perpetuates the mistaken presumption of federal ownership of these materials. We assert this superior property right and interest notwithstanding the claim made by the federal government that gravesites discovered on public lands are the property of the United States.[1]

In this vein we refer you to two attached documents: the first is the recent opinion of the Court of Appeals for the State of Louisiana in Leonard Charrier v. Louise Lessley Bell, et al., No. CA-85-0867 (October 15, 1986); and the second is a copy of a law review article by Walter R. Echo-Hawk, entitled Museum Rights Versus Indian Rights; Guidelines For Assessing Competing Legal Interests In Native Cultural Resource, Vol. XIV N.Y.U.Rev. of Law and Social Change 473 (1986). The basic premise of our argument is that the federal government cannot establish good, clear title to the skeletal remains and associated grave goods unless it can be established factually that either title was acquired from the respective Indian tribes or that those tribes intended to abandon legal title and claim to such property. The same argument holds with respect to private institutions and the skeletal and grave goods contained in those collections, whether obtained from private or public sources.

In short, we believe any federal legislation dealing with this issue should start with the presumption that, absent clear and convincing rebuttal evidence, Indian tribes with cultural affinity hold legal title to human skeletal remains and grave goods contained in the museum collections which are the subject of your proposed legislation.

The foregoing statement of our position obviously raises the question of whether we can support the proposed legislation and remain consistent with our view. To remain consistent with our position we would have to see substantial amendments made to Section 5 of the proposed bill. Such amendments would, for all practical purposes, eliminate (with the exception of the proposed Section 7 amending Section 4 of ARPA) the necessity of creating a Museum Advisory Board. There would be no circumstances in which there would be a dispute between the involved museum or other institution and involved Indian tribe or tribes concerning the disposition of the human remains which are the subject of the tribe's interest. This is because, as stated earlier, tribes have superior property rights to human remains and associated grave goods; hence, there would be no question as to whether they would be returned to the tribe for the proper disposition. Circumstances will obviously vary from tribe to tribe; an Indian tribe might perhaps be willing to allow some scientific study or examination of the involved skeletal remains. Under those circumstances, the Advisory Board staff could assist in preparing the appropriate agreements between the institution and tribe concerning the methods of scientific examination allowed, periods of time in which the examinations would have to occur, and other related details.

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[1] See, e.g., definition of graves and human skeletal remains as "archeological resources" in the Archeological Resources Protection Act of 1979, 16 U.S.C. §470aa.

Before moving on to specific comments relating to the bill as drafted, it is important to point out that we wholly endorse and support the proposed Section 7 of the legislation, amending the Archeological Resource Protection Act of 1979. We would point out, however, that the definition of "archeological resource" should be amended to strike the reference to or classification of graves and human skeletal materials discovered on public lands. In short, we support the concept of federal protection of grave sites and human skeletal remains of the aboriginal inhabitants of the continental United States, Alaska and Hawaii; however we believe the authority of the United States to preserve and protect such resources stems from the federal trust responsibility owed to Native peoples in this country, and not by virtue of any property rights which the United States has acquired in the graves and human skeletal remains of Native people.

Notwithstanding the fact that we do not wholly support or endorse the bill as presently drafted, we offer the following concerns and comments. We would like to point out initially that for some of our concerns we cannot provide recommendations or answers to at this time; however, we merely flag these issues for our future collective consideration.

Section 2 - Findings.

This section outlines the basic problem that the bill is intended to address, i.e. the need of tribes to secure the skeletal remains and sacred objects that are in the possession of museums. The bill recognizes that tribes have a moral right to these items but the bill goes on to recognize that the academic interest of the museums must be balanced against the tribal interest. Why this balancing test must be applied in all instances, or why it must be applied at all, the bill does not state.

Section 3 - Definitions.

a. The definition of "Indian" is unduly restrictive. Of immediate concern is the protection of the rights, or example, of Native Alaskans who, by virtue of their birthdate, are not considered shareholders in the Alaska regional corporations. Similarly, what are the rights of descendants of enrolled members of Indian tribes even though not enrolled?

b. The definition of "Indian tribes" is also unduly restrictive. What of tribes which have a distinct cultural, geographical and political organization yet are not federal recognized? Because we are talking here about their First Amendment constitutional and property rights, any federal legislation in the area must necessarily include the rights of unrecognized tribes to protect the graves and human skeletal remains of their ancestors.

c. In defining the term "Native Hawaiian organization" we would hesitate to give the Governor of the State of Hawaii the authority to select the organization. It does place an unnecessarily subjective, political restriction on the rights of Native Hawaiians to protect these resources. We recommend you contact Mahealani Ing, Director, Native Hawaiian Legal Corporation at (808) 521-2302 for further consultation.

d. The last phrase of the definition of "traditional cultural authority" should be changed to read the "traditional cultural affairs of Indian people", rather than "the traditional affairs of the Indian."

Section 4 - Native American Museum Advisory Board.

This section creates a Board which will be the administrative agency to deal with the substantive problem described in the findings. The bill states that the Board will have 17 members but this is, as will be seen, incorrect. Only six seats on the Board must be allocated to Native American interests. The members are appointed by the President from a list supplied by Indian tribes. Exactly how tribes will develop the list is not specified. One Board seat is allocated to a Native Hawaiian. This individual is appointed by the President based upon a list supplied by the Governor of Hawaii.[2] All of these seven appointments are made voting members of the Board.

Two members from both the House and the Senate are also to be appointed (but how they are selected is not mentioned). These four slots are also voting members. We fail to see the utility or necessity of having these Board members.

Two members, appointed by the President, are to represent archeology and anthropology interests but there is no provision indicating how the President is to select them. These are voting members. Two members, again appointed by the President in an unspecified manner, are to represent museum and university interests. These are also voting members. This brings the total of voting members to fifteen with six representing Native American and one representing Native Hawaiian interests.

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[2] *See* earlier comment.

The remaining members of the Board are non-voting seats. One seat each is allotted to the Institute for American Indian Arts, the Smithsonian Institution, Secretary of the Interior, Secretary of the Agriculture and the Executive Director of the Advisory Council on Historic Preservation. These five non-voting seats can attend all meetings and provide "advice."

To summarize, of the 15 voting seats, only 7 represent Indian interests. The remaining voting seats (which constitutes the majority) represent scientific, political or university/museum interests. If you factor in the non-voting seats the tribal interests have 7 of 20 seats.

Is the board free-standing or is it to be housed within the Department of the Interior? What is its legal status as a "Board"? In terms of the federal appropriations process, how will the Board be characterized for purposes of determining which House and Senate committees would have jurisdiction over appropriations as well as oversight to its operations?

The rest of section three is devoted primarily to Board housekeeping matters (rate of pay, election of chairman, etc.). Three items are of interest. First, a quorum consists of half of all voting members so a meeting could be held without any Indian participation. Second, vacancies can apparently be filled by the Board, so Indian replacements would not be controlled by Indian interests nor would the vacancy have to be filled from the list of nominees supplied by the tribal groups. Lastly, Native Americans are extended a preference in hiring for all staff positions but it is not clear if the Executive Director or the General Counsel would be covered by the employment preference.

Section 5 - Dispute Resolution.

This section describes what the Board is supposed to do once it begins functioning. The bill anticipates that when a dispute arises between a museum and an Indian tribe over possession of Indian artifacts or skeletal remains which is in the possession of non-Indian interests, the Board is authorized to "mediate" the dispute. Certain procedural requirements must first be met to establish that a dispute exists (primary time and notice requirements). The Board initiates an investigation but is not bound to conclude it within any particular time restraints.

If, after investigation, the Board reaches a "negative" finding the Board must dismiss the petition. Problems arise at this point. There is no apparent appeal process. It is not clear that this negative finding constitutes "agency action" which would serve to trigger the Administrative Procedure Act and thus allow appeal to federal courts. In addition, there is no requirement that a museum or university (or tribe for that matter) that has a seat on the board must refrain from decision making if it represents the entity being complained of; i.e., there is no conflict of interest provision.

If a tribe's complaint is found to have merit the Board is supposed to devise a "compromise settlement." This settlement is supposed to accommodate the interest the tribe has in return of the object and the interests of others who seek possession of the items for display, research or study purposes. The accommodation must, under the proposed bill, balance the competing interests. The bill again runs into problems at this point because, in many instances, the tribe should have an absolute right to return without any strings being attached. If a tribe, for example, has an item stolen from it by grave robbers and then the item is "sold" to a university, why should the tribe's interest be balanced against the university's at all? If a car is stolen and is illegally sold to another, the buyer of the "hot" car has no ownership interest. If recovered, the original owner gets the car back. The bill, however, fails to recognize this common occurrence.

The proposed bill also provides that where the Board rules that the skeletal remains or artifact should be returned to the tribe there must be a provision which requires "to the maximum extent possible" that the museum have access to the artifact for research, etc. provided that the tribe approves and any information is shared with the tribe. An obvious problem with this approach is that no real solution is being offered. The provision requires museum access to the maximum extent but often this is inconsistent with tribal needs. One does not permit strangers to carbon date or otherwise interfere with the remains of tribal ancestors. If a tribal object is central to a religious ceremony then viewing, picture-taking or other handling by non-members is prohibited. The mandatory language requiring museum access to the "maximum extent possible" imposes a burden that often cannot be met.

One could easily conclude that the provision requiring tribal consent would seem to solve this problem. All a tribe has to do is refuse access. The problem is that Section 5 of the proposed legislation further provides that if the Board finds that the Indian tribe has not conformed with the Board imposed agreement then, upon publication and finding, the tribe becomes ineligible to receive federal funding for a two year period.

If a tribe, therefore, decides to refuse museum access the Board (which is dominated by non-Indian interests) has the power to make a finding and publish a notice of non-compliance which results in a tribe's becoming ineligible for any federal funds for a two year period. This finding is explicitly made non-reviewable by a federal court.

A major problem with the bill is that the jurisdiction of the Board is not clearly stated. The bill speaks only in terms of actions against museums but many artifacts are held by universities and private collectors. The bill provides for cataloging of federal holdings but does not make clear whether the United States is bound by the bill. Is, for example, the Smithsonian obliged to return all of its skeletal remains upon demand by a tribe? The bill needs to be clarified on the jurisdictional level.

Obviously, there are significant problems with this section. The ambiguous language, lack of due process and apparent inability of the Board to develop a range of punishment are all failings that must be cured. There are additional problems but these are the most difficult and obvious.

Section 6. - Native American Center.

This section establishes a "Center" within the Library of Congress. The Center is charged with the responsibility of listing all the skeletal remains and artifacts in the possession of the federal government. The compilation of this information will be distributed or sold to tribes or other interested parties.

An obvious problem with the section is that it does not require that the information be compiled on a tribe by tribe basis or that tribes be notified of the findings. Nor does it make clear that the items are subject to the petition for return process. The obligation to return material must be clarified and the compilation must be done on a tribe by tribe basis or it will be difficult for a tribe to determine exactly what material is held by the federal government or which agency holds it.

The Center has certain duties laid out which include the furnishing of advice as to the establishment of model (tribal?) museums, historic preservation and the promotion of cooperation between tribes and museums both inside the United States and with foreign museums. Staffing is provided for with a preference being extended to Native Americans. Again, it is not clear that the Executive Director's appointment is subject to the Indian preference.

Section 7 - Amendments to the Archeological Resources Protection Act.

The first proposed amendment is apparently intended to include Native Hawaiian lands within the definition of Indian lands. If so, the effort fails. Rather than modifying the term "Indian lands," as was apparently intended, the proposed amendment would modify an exception to the Indian lands definition that was created for certain subsurface interests. The amendment should appear after "Indian individuals." In any event, the Indian lands definition contained in this section is much too constrictive. It apparently excludes on-reservation patented lands. At the very least, the Indian lands definition should be as broad as the Indian country definition that is provided in 18 U.S.C. 1151(a) (" . . . all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.").

If Native Hawaiians are to be included then they should be added to the "Indian tribe" definition provided in 470bb(5).

The term "sacred artifact" is defined so as to exclude items formerly used in religious or cultural activity. Apparently only currently used sacred objects are intended to be covered.

With respect to newly discovered skeletal remains the proposed amendments would require that the Federal land manager "consult" with the relevant tribe and archeological and physical anthropological authorities. If the consultation fails, the matter is referred to the Board. The problem with this section is that there are no time deadlines imposed on the land manager nor is there a clear direction as to which tribal entity has standing to claim a right of disposition. The bill speaks in terms of tribes having "cultural affiliations" with the remains. This would not provide much guidance to a land manager who has no training or expertise in the matter. It may be preferable for the Board to be directed to develop regulations to cover these sorts of determinations.

Thank you for your attention to these comments.

Very truly yours,

Steven C. Moore

Steven C. Moore
Walter R. Echo-Hawk
Henry Sockbeson

FCNL
FRIENDS COMMITTEE ON NATIONAL LEGISLATION
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July 21, 1987

Senator John Melcher
Attn: Clara Spotted Elk
United States Senate
Washington, DC 20510

Dear Senator Melcher:

The Native American Advocacy Project of the Friends Committee on National Legislation would like to thank you again for your continued commitment to the sensitive issue of "reburial" or repatriation of Indian remains, grave goods and sacred objects. We appreciate the process that you and your staff have undertaken in the past year and a half since S. 187 was introduced and was the subject of hearings before the Senate Select Committee on Indian Affairs.

We write to express our support for the amendment you introduced on May 25, which is an amendment in the nature of a substitute for S. 187. This new language would establish an independent Native American Claims Commission to receive and consider claims filed by an Indian tribe, Alaska Natives or the Office of Hawaiian Affairs. Our ideal position would be that the recognition of the claims of Indian tribes, Alaska Natives and Native Hawaiians to their peoples' skeletal remains, grave goods and ceremonial objects would lead to their immediate and unconditional return. However, we appreciate that the Commission could issue orders for the right of possession should its investigation of a tribal claim lead to that conclusion. We also appreciate the spirit of negotiation and dialogue of the amendment -- which we hope will address the concerns of the museums, that they would have an airing of their views about returning remains or objects.

As a faith-based organization representing like-minded members of the Religious Society of Friends (Quakers), we strongly believe that there is a moral obligation for skeletal remains and sacred objects to be returned to Native Americans from museums and other institutions in order that American Indian, Alaska Native and Native Hawaiian people may enjoy their right to religious and cultural freedom. We hope that this version of the "Native American Cultural Preservation Act" and the Native American Claims Commission it would create may increase respect for Native peoples -- both those alive today and those whose spirits continue with us -- and their lifeways and traditions.

We again thank you for your leadership on this issue, and express our support for the substitute version of S. 187. We ask that this letter be included in the hearing record of July 28 on this new language.

Sincerely yours,

Cindy Darcy

Cindy Darcy

Mark Hulbert *Clerk, General Committee*
Edward F. Snyder *Executive Secretary*
Cindy Darcy *Native American Advocacy Project*
Selig Goodman *Development Secretary*
Ruth Flower *Legislative Secretary*
Carolyn C. Rudd *Clerk, Executive Committee*
Nancy C. Alexander *Legislative Secretary*
Alison D. Oldham *Legislative Action Coordinator*
David Boynton *Associate Secretary for Administration*

KODIAK TRIBAL COUNCIL

Post Office Box 1974 Kodiak, Alaska 99615

July 11, 1988

The Honorable Daniel Inouye, Chairman
Senate Select Committee on Indian Affairs
722 Hart Street
U.S. Senate Office Building Room 828
Washington, D.C. 20510

Dear Senator Inouye and Members of the Senate Select Committee on Indian Affairs;

It is my understanding that a hearing on S.187, the Melcher Bill to resolve disputes over Indian remains and artifacts, is scheduled for July 8, 1988. The Kodiak Tribal Council would like this letter and the attached resolution to be made part of the record on S.187.

Through extensive research, we have been able to ascertain that an "archeaologist" named Hrdlicka was present in and around many of the village sites during the 1930's. As is presented in Anthropological Papers of the University of Alaska: Ethnohistory and Historical Archaeology, Kodiak Island

> "...in his quest for thick prehistoric site accumulation he was not impressed by the. . .(sites with) relatively thin refuse...".

We are aware of the manner in which Hrdlicka collected massive amounts of archeaological remains in the Kodiak region, as well as throughout other areas of Alaska, and much of what he collected during the 1930's are in museums in various places. Since the Kodiak Area Native Association is currently undertaking an effort to have a Cultural Center and Museum for the Kodiak Area and the Cultural Committee has organized in order to affect gaining the necessary data to implement such a Center and Museum, we are very interested in the outcome of S.187.

The Kodiak Tribal Council would like to thank the Senate Select Committee for acknowledging our concern in this matter.

Very Truly Yours,

Margaret Roberts

Margaret Roberts, President
Kodiak Tribal Council

Representing the Members of the Shoonag' Tribe, Kodiak, Alaska

KODIAK TRIBAL COUNCIL

RESOLUTION 88-12

RELATING TO THE RETURN OF HUMAN REMAINS FROM THE SMITHSONIAN INSTITUTION

WHEREAS, THE KODIAK TRIBAL COUNCIL is the governing body of the Shoonaq' Tribe; and

WHEREAS, The Tribal Members are descendants of the original Kaniagmiut people of the Shoonaq' Tribe of Kodiak; and

WHEREAS, The Tribal Members are Koniag Natives and wish to preserve the rich cultural heritage of its people; and

WHEREAS, The KODIAK TRIBAL COUNCIL recognizes the equality of all human beings on this earth and their right to be treated with dignity and respect; and

WHEREAS, this respect is extended to human remains after death; and

WHEREAS, around the turn of the century, military and scientific expeditions collected human remains throughout Alaska, particularly in the Native villages around the Kodiak Islands; and

WHEREAS, the Smithsonian Institution became the final repository for a great number of these human remains; and

WHEREAS, the display and storage of these human remains in the Smithsonian Institution is inappropriate and manifests lack of respect for the remains; and

WHEREAS, during the decade of the 1970's, many agreements were made between Native Tribes and Museums whereby the museums could research and analyze the remains of the ancestors of Native peoples, for periods of 10 to 20 years, thereupon returning the remains to the relatives or to the sites of origin; and

WHEREAS, the Smithsonian Institution has held the remains of many of the ancestors of the original Kaniagmiut people of the Shoonaq' Tribe for periods in excess of 50 years; and

WHEREAS, the return of these human remains to relatives or to the sites of origin would be an appropriate act of restitution; and

WHEREAS, The Kodiak Area Native Association, the non-profit corporation for the Koniag region, has undertaken an effort to have a Cultural Center and Museum constructed in Kodiak, Alaska;

WHEREAS, it would be only fitting and proper that the remains of the Koniag peoples ancestors be returned for our own people to determine the appropriate resting place for the remains;

THEREFORE BE IT RESOLVED that the KODIAK TRIBAL COUNCIL strongly urges that the Smithsonian Institution comply in a respectful and timely manner with the request of THE KODIAK TRIBAL COUNCIL for the return of human remains taken from the Koniag region around the turn of the century.

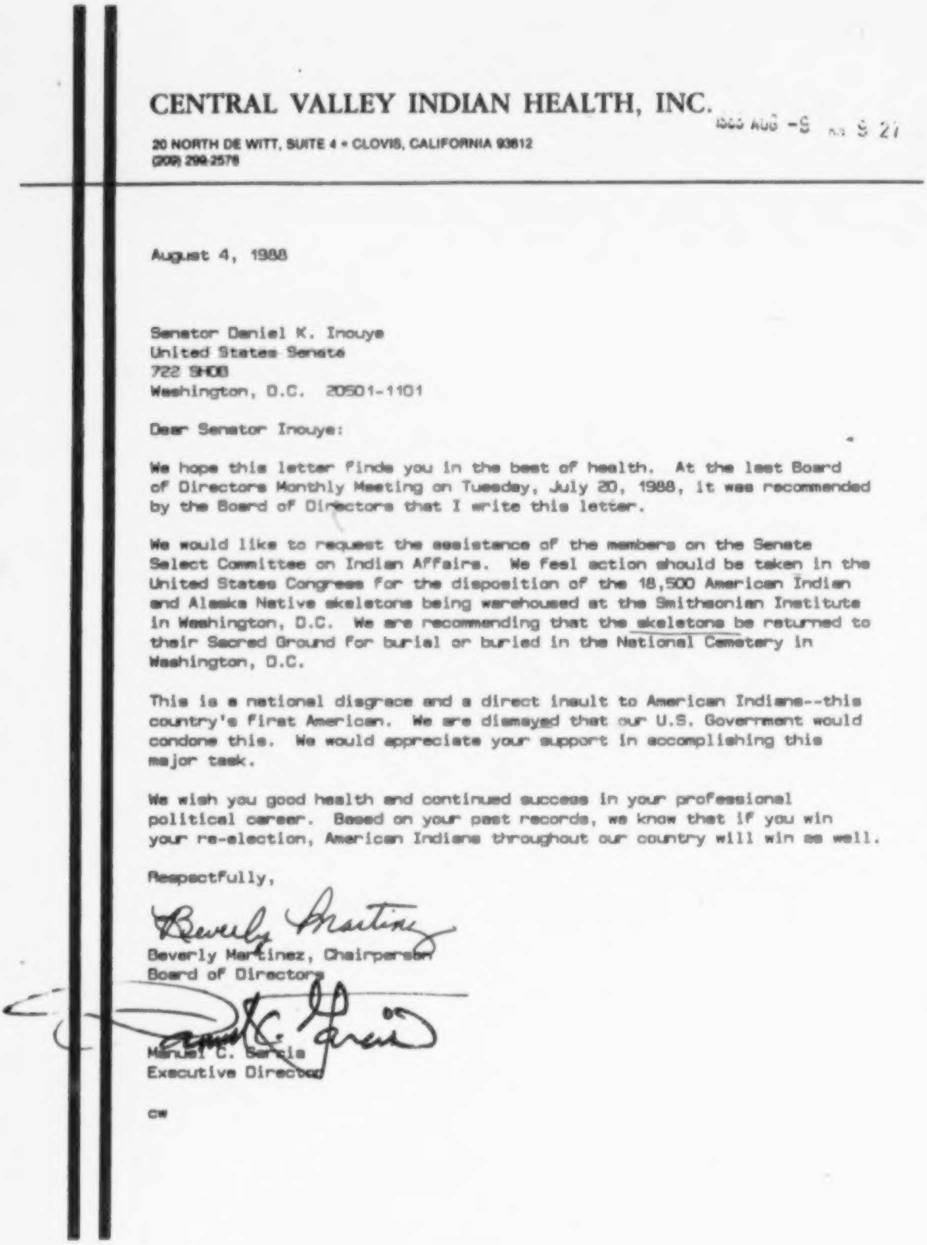
COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; Mrs. Reagan, First Lady of the United States; the Honorable Daniel K. Inoüye, Chairman of the Senate Select Committee on Indian Affairs; the Honorable Robert McCormick Adams, Secretary of the Smithsonian Institution; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

ACCEPTED THIS 11th DAY OF July 1988

Margaret Roberts
Margaret Roberts, President

Linda Lester
Linda Lester, Secretary

Attest Tosha Delaktionoff



CENTRAL VALLEY INDIAN HEALTH, INC.
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August 4, 1988

Senator Daniel K. Inouye
United States Senate
722 SHOB
Washington, D.C. 20501-1101

Dear Senator Inouye:

We hope this letter finds you in the best of health. At the last Board of Directors Monthly Meeting on Tuesday, July 20, 1988, it was recommended by the Board of Directors that I write this letter.

We would like to request the assistance of the members on the Senate Select Committee on Indian Affairs. We feel action should be taken in the United States Congress for the disposition of the 18,500 American Indian and Alaska Native skeletons being warehoused at the Smithsonian Institute in Washington, D.C. We are recommending that the skeletons be returned to their Sacred Ground for burial or buried in the National Cemetery in Washington, D.C.

This is a national disgrace and a direct insult to American Indians--this country's First American. We are dismayed that our U.S. Government would condone this. We would appreciate your support in accomplishing this major task.

We wish you good health and continued success in your professional political career. Based on your past records, we know that if you win your re-election, American Indians throughout our country will win as well.

Respectfully,

Beverly Martinez
Beverly Martinez, Chairperson
Board of Directors

Manuel C. Garcia
Manuel C. Garcia
Executive Director

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COUNCIL FOR MUSEUM ANTHROPOLOGY

July 27, 1988

Senator Daniel Inouye
Chairman, Select Committee on Indian Affairs
U. S. Senate
Washington, D. C.

Dear Senator Inouye:

I am writing to you as President of the Council for Museum Anthropology regarding the proposed Native American Museum Claims Commission Act. The Council for Museum Anthropology is a professional organization of anthropologists who work in museums or who are concerned with anthropology museums. We have serious misgivings about the proposed legislation to establish a new federal commission that would attempt to settle repatriation claims. I would like to share some of our concerns with you.

First, however, I want to make clear that the Council for Museum Anthropology strongly supports serious negotiation leading to resolution of repatriation claims. At its business meeting on June 9, 1987, members of the Council for Museum Anthropology passed the following resolution:

> RESOLVED: That the Council for Museum Anthropology acknowledges that repatriation is of mutual concern to museums and native peoples; that as museum professionals we affirm our commitment to serious negotiation in good faith and strongly advocate mutual cooperation and negotiation between directly affected parties as the means to resolve issues of repatriation. If arbitration becomes necessary, it should take place at the local level with mutually agreed-upon third parties, rather than through a nationally appointed commission as proposed in Senate Bill S. 187.

Although many details of the original Native American Cultural Preservation Act which prompted this resolution have been modified in the new bill, the fundamental approach to dealing with claims remains. The bill again calls for the formation of a national commission which will attempt to resolve claims for repatriation.

It is this national-level approach with which the Council for Museum Anthropology has the most serious disagreement.

It is certainly true that in addressing this subject you have caused the museum community to focus its attention on repatriation with beneficial results. The Council for Museum Anthropology's Resolution is one such indication, as is the policy drafted and passed by the American Association of Museums. Indeed, museums across the country are reassessing the ways in which they manage their Native American collections in response to the concerns that this bill raises. Clearly, positive things are happening. We believe that adopting this legislation would deter those who are finding ways to resolve repatriation claims that without need for federal intervention. We encourage you to consider seriously the proposal set forth in Michael J. Fox's testimony on behalf of the American Association of Museums in which he calls on your committee to promote an active program of dialog between the various parties affected by this issue. We feel that the outcome of such a dialog will be a greater sense of cooperation and committment among the individuals and groups who would participate.

In opposing the proposed legislation we are not trying to avoid the basic issue. Our argument is that the approach set forth in the Native American Museum Claims Commission Act is the wrong course to take. We need a system that encourages local-level resolution rather than an expensive and inefficient national commission.

Negotiating claims for repatriation requires knowledge and sensitivity that grows out of long-term involvement with the particular group making a claim. Such expertise is found both among the native people who have specific responsibility for religious objects and ceremonies as well as among academic specialists who have devoted themselves to understanding other ways of life. This kind of negotiation, and here I write from my own experience, is intimate and personal and requires the sensitivity to understand that in these circumstances many voices must be heard. This does not necessarily mean that, left to our own resources, Native American and museum representatives would always find satisfactory solutions to these problems without recourse to the judicial or political process. Not all anthropologists, museum professionals or, for that matter, Native Americans possess the knowledge, skills, patience, or sensitivity to successfully resolve repatriation claims. We feel strongly, however, that such direct efforts are far more likely to produce mutually satisfactory results than would the imposition of a remote commission's findings.

For situations in which attempts at resolution at the first, direct level reach an impasse, we offer an alternative to the proposed Commission. We believe that effective mediation could be aided by drawing from a large pool of experts who would assist museums and tribes in the negotiation process. This new group would be administered apart from the museum establishment to prevent claims of bias in favor of museums. Yet, it would bring in the necessary expertise at the crucial moment for negotiations. The pool of experts would include many individuals outside of the museum profession, such as mediators, Native Americans and academics and would be available for fact-finding and negotiation. Should negotiations not result in a satisfactory resolution of the claim, we advocate, as stated in our resolution, arbitration at the local-level with mutually agreed-upon third parties. As a last resort, existing laws such as the Native American Religious Freedom Act should be enforced.

The proposed legislation does not have a comparable concern for being unbiased. In fact, it appears strongly weighted in favor of the claimant and assumes that museums are intransigent. This stance is highlighted in the sponsor's statement accompanying the bill. It does not refer to any of the numerous occasions in which museums and Native Americans have worked together quietly to settle claims. The contentious atmosphere the Act would create will do little to further the efforts of the many people who have worked to achieve mutual understanding.

The sponsor's statement requires additional comment. Using the phrase "scientific curios" to describe how museum professionals view collections carries a derogatory connotation that seriously misrepresents the intent and history of the museum profession. In addition, the supporting statement cites the presence of ceremonial objects in museum collections as a cause of the erosion of Native American religions without noting the history of federally sanctioned oppression of rituals and beliefs. The suggestion that museums are to blame for the erosion of native religions reflects an attitude toward history that blames others--museums or Indians--for federal policies and practices which have had direct and damaging effects on native cultures in the United States. This historically inaccurate view pervades the bill and cannot pass unchallenged.

Further, the implication that the formation of this Commission will save tribes from costly litigation can be disputed. It suggests that a tribe would make a claim to the Commission without the benefit of legal counsel. Also ignored are the significant costs that museums would incur. Who would pay for this serious drain on the resources of the institutions charged with caring for our national heritage? Would the federal government assume these legal costs? Unfortunately, the Indian Claims Commission, on which the Native American Museum Claims Commission is modeled, does not offer a precedent, since the Indian Claims Commission did not have to adjudicate third-party claims. As it is written, the legislation would appear to place a tremendous burden on the already strained budgets of museums.

While the Council for Museum Anthropology believes it would be misguided to adopt the proposed legislation, we applaud your efforts to confront one of the most critical issues facing museums today. We recognize that while repatriation itself is a crucial question that demands honest and forthright resolution, it symbolizes a more fundamental shift in the way that museums are perceived in our society. Institutions that were once bastions of exclusivity are now learning to work with varied and vocal constituencies. It will take strong, patient leadership to guide this new role for museums, and in that light we look to you to make thoughtful, informed decisions.

If I, or a representative of the Council for Museum Anthropology, can be of assistance to you in developing future legislation relating to repatriation, please do not hesitate to call on our organization. I respectfully request that this letter be made part of the public record relating to the Native American Museum Claims Commission Act on which the Committee will hold hearings on July 29, 1988.

Sincerely,

Peter H Welsh

Peter H. Welsh, Ph.D.
President, CMA

Chief Curator/Director of Research
The Heard Museum, Phoenix, Arizona

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